

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

JANUARY TERM, 1927.

No. 4550. **378**

PAUL C. WARNER, APPELLANT,

vs.

NATALIE A. WARNER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED JANUARY 8, 1927.

PRINTED FEBRUARY 14, 1927.

LIBRARY

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

Court of Appeals of the District of Columbia

JANUARY TERM, 1927.

No. 4550.

PAUL C. WARNER, APPELLANT,

vs.

NATALIE A. WARNER, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

INDEX.

	Original	Print
Caption	<i>a</i>	1
Bill of complaint.....	1	2
Fiat of Justice Bailey.....	8	7
Answer to rule to show cause.....	9	7
Stipulation	17	14
Motion for authority to amend answer.....	18	14
Order	19	15
Amended answer of Paul C. Warner.....	20	15
Reply of Natalie A. Warner to defendant's answer and cross- bill	24	19
Decree dismissing bill, &c.....	31	23
Memo. noting appeal of both plaintiff and defendant.....	33	25
Memoranda: Undertaking on appeal for \$100 approved and filed; order extending time to file statement of evidence; order further extending time to file statement of evidence; statement of evidence filed.....	34	26
Assignment of errors.....	34	26
Designation of record.....	35	27
Memoranda: Plaintiff's proposed amendments to bill of ex- ceptions filed; statement of evidence signed in duplicate...	37	28

	Original	Print
Clerk's certificate.....	38	28
Notice of submission of statement of evidence.....	39	29
Statement of evidence.....	40	29
Testimony of Elizabeth Batt.....	40	29
Natalie A. Warner.....	41	30
Au Ayou B. Hanna.....	53	42
Bunn Kelley.....	78	65
Mrs. Delmar Shepley.....	89	76
Blanche Bell.....	90	76
William O'Connell.....	92	77
George Karl Hoffman.....	92	77
Joseph V. Connelly.....	96	80
Ivan King.....	99	85
Mrs. Willmar Nicholas King.....	104	89
Robert S. Hollingshead.....	109	95
Thomas Bailey.....	111	97
Missouri Jackson.....	113	99
Henry E. Warner.....	114	101
Daniel Foley.....	115	102
Kneffler McGuinness.....	116	103
William B. Childs.....	117	104
William C. Frisbie.....	117	104
Walter D. Diehl.....	118	105
Paul C. Warner.....	119	106
Florence Farnsworth.....	138	126
Natalie A. Warner.....	138	126
F. M. Roberts.....	141	128
Robert L. Slatten.....	142	129
J. Simpson Reese.....	143	130
A. Morley Derbey.....	144	131
Eugene P. Elebash.....	146	133
Jack Crenshaw.....	146	133
James A. White.....	147	134
Albert Tucker.....	148	134
George F. Willicombe.....	149	135
Samuel B. McMurrain.....	154	140
Exhibits	157	142

Court of Appeals of the District of Columbia

No. 4550.

PAUL C. WARNER, Appellant,

vs.

NATALIE A. WARNER.

a Supreme Court of the District of Columbia.

In Equity.

No. 42435.

NATALIE A. WARNER, Plaintiff,

vs.

PAUL C. WARNER, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above entitled cause, to wit:

Bill of Complaint.

Filed April 8, 1924.

In the Supreme Court of the District of Columbia, Holding
an Equity Court.

In Equity.

No. 42435.

NATALIE A. WARNER, Plaintiff,

vs.

PAUL C. WARNER, Defendant.

To the Supreme Court of the District of Columbia, holding
an equity court:

The plaintiff, Natalie A. Warner, respectfully states as
follows:

1. That she is an adult citizen of the United States and
a resident of the District of Columbia and brings this suit
in her own right.

2. That the defendant Paul C. Warner is an adult citizen
of the United States and a resident of the District of Co-
lumbia and is sued in his own right.

3. That heretofore, on, to-wit, October 11, 1920, the plain-
tiff and the defendant were lawfully married in the City of
Boston, State of Massachusetts, by Reverend Father Mc-
Manus, of the Saint Lawrence Catholic Church in the City
of Boston, State of Massachusetts, who was duly author-
ized and empowered by law to perform said marriage.

4. That one child, whose name is Helen Adrian Warner,
was born of the aforesaid marriage, on, to-wit, October 11,
1922, and that said child is now in the care and custody
of the plaintiff.

2 5. That from the date of said marriage between
the defendant and the plaintiff, the plaintiff resided
in Boston, Mass., until, to-wit, November, 1920, when the
plaintiff and the defendant took up their residence in the
City of Pensacola, State of Florida, and cohabited there as

man and wife, until the month of April, 1922, except as hereinafter stated. And during the month of April, 1922, the defendant and the plaintiff came to the City of Washington, District of Columbia, since which last mentioned date the plaintiff and defendant lived together as man and wife, except as hereinafter stated, until, to-wit, March 13, 1924, on which last mentioned date the defendant drove the plaintiff and their said infant daughter from their home No. 3032 Q St., N. W., this city, as is hereinafter more fully set forth.

6. That although the plaintiff has always conducted herself as a kind, affectionate and dutiful wife to the defendant, yet notwithstanding this, on, to-wit, March 15, 1922, and for many weeks prior thereto, and on many occasions during their married life, the defendant, without just cause or reason became enraged in the presence of the plaintiff when the defendant made assaults upon the plaintiff by beating and bruising the plaintiff with his fist and by cursing and humiliating the plaintiff by applying to the plaintiff all manner and forms of approbrious epithets in the presence of plaintiff and the servants of plaintiff and defendant, and in their household. That on, to-wit, March 16, 1922, the defendant became so violent in his assault and

3 battery upon the plaintiff that the plaintiff was compelled and forced to seek refuge and shelter in the home of her friends.

Plaintiff further says that in the month of March, 1922, the plaintiff was in a delicate physical condition, notwithstanding which the defendant visited upon the plaintiff coarse and brutal treatment, cursing abusing and even striking the plaintiff with his clenched hand on plaintiff's side with such force the plaintiff was compelled to be treated by a physician; that on the occasion of the last mentioned assault and battery upon the plaintiff by the defendant, the plaintiff says that the defendant well knew of the plaintiff's anxiety and state of mind due to the plaintiff's then delicate physical condition.

Plaintiff further says that, about a week after the last mentioned occurrence and while she was living with the family of a friend of plaintiff and defendant, and while plaintiff was then entirely dependent upon said family in

order that plaintiff should have food and shelter, the defendant gave assurances to plaintiff and her then attorney that if plaintiff would resume marital relations with defendant he would desist from his cruel treatment of the plaintiff and would cease applying abusive and violent language towards the plaintiff, and he promised to demean himself as a husband should. The plaintiff says that relying upon the said promises and assurances she resumed marital relations with the defendant, and they continued to live together until September, 1923.

7. The plaintiff further states that in September, 1923, the plaintiff and defendant were residing in an apartment in Apartment house No. 1915 16th Street, N. W.,
4 this city; that the defendant, (Who had previously been drinking intoxicants, as he frequently does), without just cause or excuse, struck and beat the plaintiff, causing the plaintiff to fall to the floor, and on said occasion the defendant also cursed and abused the plaintiff; the plaintiff screamed for help and the Janitor of the Apartment house came to the rescue of the plaintiff.

Thereupon, the defendant left the premises and remained away from the plaintiff and child for about a month.

Plaintiff further says that, on, to wit, January 17, 1924, she was again forced and compelled, fearing for the safety of her life and health and that of their minor child, to leave the defendant and take up a temporary residence with friends in the City of Washington, District of Columbia; but that at the renewed solicitations and assurances of the defendant that he would refrain and desist from his cruel and abusive treatment of the plaintiff and their minor child she consented again to resume her marital relations with him, but the defendant continued his maltreatment, assaults, and abuse of the plaintiff, and the defendant did not refrain from applying to her and their minor child profane epithets. Plaintiff says on, to-wit, March 13, 1924, the defendant drove the plaintiff and their said child from their home No. 3032 Q Street, N. W., this city, since which the plaintiff and said child have been, and are now residing with friends and dependent upon them for food and shelter. Since March 13, 1924, plaintiff and child have been compelled to live separate and apart from the defendant.

Plaintiff further says that since the date last aforesaid, March 13, 1924, the defendant has wholly neglected and refused and now neglects and refuses to provide for the support and maintenance of the plaintiff and their minor child, although he has been repeatedly requested by the plaintiff to support her and said minor child.

5 8. Plaintiff further says that during all the times aforesaid it has been her endeavor for the sake of peace and harmony and for the sake of their minor child to continue to live amicably and peaceably with the defendant but that all her efforts and endeavors in that respect have resulted in a systematic course of neglect, maltreatment and abuse by defendant of the plaintiff, although the plaintiff says she had at all times conducted herself as a kind, affectionate and dutiful wife, and that at each of the times aforesaid excepting on, to-wit, March 13, 1924, acting upon the assurances and promises of the defendant that he would treat the plaintiff as he should treat her, she has consented to a reconciliation and each time consented to resume her marital relations with him.

9. Plaintiff further says that, on, to-wit, March 13, 1924, when the defendant drove plaintiff and their minor child from their home, the plaintiff caused to be removed a few articles of household furniture, to-wit, two chairs, one table, one rug, one sewing machine, one floor lamp and an Oldsmobile car (coupe model), which said articles of property the plaintiff says the defendant theretofore had given her. Plaintiff is informed and believes that said car, which has been in constant use for over two years and has been
6 driven over 24,000 miles, is worth about \$300.00.

10. That the defendant is addicted to and habitually uses intoxicating liquors and at all the times aforesaid when plaintiff was living with the defendant, the defendant would come to his home at late hours at night, and in the mornings, in a drunken condition and that he was sick frequently from drink; and that the plaintiff was accustomed to care for and attend to him in his drunken condition and provide him with medicines and food.

Plaintiff further says that while defendant was in drunken rages, the defendant frequently struck the plaintiff in her face and on her arms and body.

11. The plaintiff further says that she and her minor child are now in destitute and necessitous circumstances by reason of the failure, refusal and neglect of the defendant to properly support and maintain the plaintiff and their said minor child, and that she has been compelled because of his cruel treatment, abusive language, as aforesaid, to take up her residence with friends and to rely upon the charity of her friends for support and maintenance and the support and maintenance of their minor child and the necessities of life for both.

12. Plaintiff further says that the defendant is a Senior Lieutenant in the United States Navy and is now stationed at the Navy Department, this city, and has a present salary and allowances amounting to the sum of Four hundred and ten dollars (\$410.00) per month.

Wherefore, the premises considered the plaintiff prays as follows:

7 1. That the United States writ of subpoena may issue herein directed to the defendant Paul C. Warner commanding him to be and appear in this court on a day certain to be named in said subpoena, and answer the exigencies of this petition.

2. That an order may be entered herein requiring and compelling the defendant to pay to the plaintiff a proper and adequate sum at such times as this Honorable Court may deem proper for the support and maintenance of the plaintiff and the minor child of plaintiff and defendant, during the pendency of this cause, and that the defendant shall also be required to pay the plaintiff or her counsel herein reasonable counsel fees and suit money and costs of this suit.

3. That a final decree may be entered herein, compelling and requiring the defendant, Paul C. Warner, to pay the plaintiff a proper and adequate sum of money permanently for the support and maintenance of the plaintiff and the infant child of plaintiff and defendant.

4. That a final decree may be entered herein granting to the plaintiff a divorce *a mensa et thoro* from the defendant, and awarding to the plaintiff the care, custody and control of the infant daughter of the plaintiff and defendant.

5. And for such other and further relief as the nature of the case may require and to the Court may seem just and proper in the premises.

NATALIE A. WARNER,
Plaintiff.

8 DISTRICT OF COLUMBIA, *To-wit:*

Natalie A. Warner, being first duly sworn deposes and says that she has read the foregoing petition by her subscribed and knows the contents thereof; that the matters and things set forth in said petition of her personal knowledge are true, and those things therein set forth upon information and belief, she believes to be true.

Affiant further says that she is not the owner of any real or personal property except the few articles of household effects and property, mentioned in the foregoing bill of complaint and that she has no means or money or resources, and is not possessed of sufficient funds to make the prepayment for costs in this cause, and respectfully asks that this suit be allowed to be filed without the prepayment of Court costs.

NATALIE A. WARNER.

Subscribed and sworn to before me this 7th day of April, 1924.

[NOTARIAL SEAL.] GEORGE H. PALTRIDGE,
Notary Public, D. C.

LEVI H. DAVID,
HARLAN WOOD,
Attys. for Plaintiff.

Fiat.

Let this bill be filed without prepayment of costs.

JENNINGS BAILEY,
Justice.

9 *Answer to Rule to Show Cause.*

Filed April 11, 1924.

* * * * *

Now comes Paul C. Warner, the defendant in the above named cause and for answer to the Rule to Show Cause

issued herein on the 8th day of April 1924, respectfully represents to the Court as follows:

1 & 2. The defendant admits the allegations contained in paragraphs one and two of the Bill of Complaint.

3. The defendant admits the allegations contained in paragraph three of the bill. Further answering, defendant states that prior to the marriage of the plaintiff and the defendant, an anti-nuptial agreement was entered into by which plaintiff agreed that in the event issue should be born as result of the proposed marriage, such issued would be reared in the Roman Catholic Faith.

4. The defendant admits the allegations contained in paragraph four of the bill as to the birth of the child referred to, and further answering states that the plaintiff without justification, cause or excuse and without notice to the defendant left the home provided by the defendant for them and took the child with her, as hereinafter set forth.

5. The defendant admits the allegations contained in the fifth paragraph of the bill in so far as they relate to the places of residences of the parties hereto but denies most emphatically that he drove the plaintiff and their infant daughter from the home provided by the defendant for them, as hereinafter set forth.

6. Answering paragraph six, defendant denies that the plaintiff has always conducted herself as a kind, affectionate and dutiful wife to the defendant. He further denies that on the dates mentioned in said paragraph or at any other time within or without their household he ever struck the plaintiff with his hands or fists or made any assault of whatsoever character upon the plaintiff or ever applied any form of opprobrious epithets to the plaintiff in her presence or in the presence of their servants or anyone else. Defendant further denies that he was ever guilty of conduct justifying the plaintiff leaving their home; on the contrary defendant has always treated the plaintiff with the utmost consideration and gratified her most unreasonable demands, notwithstanding the plaintiff without justification, cause or excuse left the home provided for her by the defendant on, to wit, March 16, 1922, and went to live with a family friendly to the plaintiff but unknown to the defendant. That he, the defendant, went to the plaintiff and persuaded her to return to her home which she

had left without any cause, and plaintiff did return and continued to live with defendant until September 1923.

7. Answering paragraph seven the defendant denies that in September 1923, or at any time prior or subsequent thereto he has ever been intoxicated or used spirituous liquors to excess. On the occasion mentioned in this paragraph of the Bill, the defendant, on his return from Annapolis where he had gone at the earnest solicitation and urging on the part of the plaintiff, to secure tickets for the Army and Navy Football Game, the conduct of the plaintiff was so abusive and humiliating that the defendant left his home and remained away for about one month during which time he kept in daily contact with plaintiff and provided her with funds. Answering further said paragraph, this defendant says that the plaintiff without any cause, whatsoever again left her home on, to wit, January 17, 1924. Defendant, anxious to maintain his home and willing to condone the conduct on the part of the plaintiff, again sought the plaintiff and persuaded her to return and conduct herself as a dutiful wife and that the plaintiff did return and they lived together again until March 12, 1924.

Defendant further answering states that the plaintiff finally deserted defendant on March 12, 1924, and not on March 13, 1924, as alleged. That at about noon time of March 12, 1924, the plaintiff accompanied defendant to the Commissary Department of the United States Army where at the plaintiff's request the defendant ordered food and supplies for their evening meal. Plaintiff at that time also gave defendant a list of supplies to be secured at the Naval Dispensary, which defendant ordered, as requested. Plaintiff then accompanied defendant to the Navy Department Building, wherein defendant's office is located, and told defendant she would call for him at four-thirty that same afternoon and accompany defendant to secure the supplies ordered at the Commissary Department. Defendant waited at the Navy Department Building for plaintiff from four-thirty that afternoon until about five o'clock. When plaintiff failed to appear, defendant telephoned his residence and was advised by the maid that plaintiff had left taking with her their infant child and left word with the maid that she was not to return. Defendant thereupon accompanied by a friend went to his resi-

dence and was again informed by the maid that plaintiff had left their residence taking with her their infant child and leaving word that she would not return. That plaintiff deserted defendant as above set forth without notice, reason or excuse, and defendant has to this day been unable to ascertain the whereabouts of said plaintiff and his infant child. Plaintiff frequently demanded \$2,000.00 saved by defendant prior to his marriage & threatened to divorce him unless said \$2,000 was turned over to her.

On the morning of March 13, 1924, before the defendant left his home for his office in the Navy Department, the plaintiff came to their home and demanded \$100.00 of the defendant. Defendant told plaintiff that he did not have that much money available, which fact plaintiff well knew, but defendant agreed to secure an advance on account of his current month's salary from the Navy Department and give it to the plaintiff before noon of that day. Defendant went to his office and about ten thirty o'clock that same morning plaintiff arrived at his office and demanded the \$100.00 of the defendant. Plaintiff's conduct at that time was so embarrassing to the defendant that he immediately secured an advance on account of his current month's salary and accompanied the plaintiff in defendant's automobile to the Dupont Branch of the Riggs National Bank. On the way to the Bank the plaintiff again insisted and demanded the defendant give her the Two Thousand Dollars, above referred to, which defendant refused to turn over to the plaintiff. Upon their arrival at the,

13 aforesaid Bank defendant gave plaintiff a check for One Hundred Dollars which plaintiff immediately cashed. Plaintiff refused to permit defendant to enter his said automobile and refused to drive him back to his office. Plaintiff still retains possession of defendant's automobile. Defendant does not know the present whereabouts of the plaintiff, their infant child or defendant's automobile. Further answering defendant says that he has always supplied the plaintiff with money for her personal needs, in fact because of his indulgence in her extravagance defendant is and has been ever since their aforesaid marriage in debt, which fact is well known to the plaintiff. The plaintiff has always had the right and privilege to obtain food and supplies from the United States Army Commissary and

that since plaintiff's desertion, to wit, March 12, 1924, she has obtained food, supplies and gasoline from the Army Commissary.

Plaintiff still has a key to the apartment occupied by the parties hereto and after the desertion and in the absence of the defendant, returned to said apartment and removed therefrom numerous articles of household furniture and effects.

That said articles of household furniture and effects were purchased by defendant from Mayer & Company, of this City, on the instalment plan and he still owes thereon the sum of about \$192.00.

On said occasion, plaintiff also took with her defendant's gold cuff links, his Navy Commissions, and his Naval full dress belt and all bric-a-brac and silver and the wedding presents of the parties.

14 In further refutation of the charge of plaintiff that defendant has refused to provide for her support and maintenance, this defendant informs the Court that in addition to paying the rent for their apartment and in addition to supplying table and paying servant hire, this defendant has given to the plaintiff for her own use the sum of about \$450.00, since January 1, 1924.

And further, this defendant informs the Court that when the plaintiff deserted him on March 12, 1924, aforesaid, she took the colored maid with her and this defendant is reliably informed, believes and therefore avers that plaintiff still has said colored maid in her employment.

Defendant further states that the only explanation he can offer to the Court for plaintiff's desertion as aforesaid, was his refusal to give plaintiff Two Thousand Dollars that he had saved prior to their marriage.

8. Answering the eighth paragraph, this defendant denies most emphatically that it has at all times been the endeavor of the plaintiff to live amicably and peacefully with the defendant nor has it been her endeavor to maintain an established home but on the contrary defendant avers the fact to be that he has been compelled to make all concessions, many of them unreasonable, in order to maintain said home.

9. Answering the ninth paragraph, defendant reiterates his denial of ever having done anything to cause the plain-

tiff to leave their home and he further denies that he ever drove her from their home, or that he gave her the articles of household furniture and effects which she took
15 from the home and further denies that he gave her the automobile, but consistently refused so to do.

10. The defendant reiterates his denial contained in paragraph seven that he is addicted to habitual use of intoxicating liquors and further denies that he ever came to his home in an intoxicating condition. He further denies that he stayed out late at night but states the fact to be that it was his custom to either remain in the home at night or to accompany the plaintiff to places of amusement which she persisted in visiting frequently. He further denies that it was ever necessary or that the plaintiff ever attended him while in a drunken condition or provided him with medicine and food, as alleged, since he was never intoxicated.

The other allegations contained in said paragraph are firmly denied and defendant says they are malicious in their character and absolutely without foundation.

11. Defendant denies all the allegations contained in the eleventh paragraph and states the facts to be, as hereinbefore set forth, that the plaintiff deserted the defendant without any cause whatsoever. He further states that since her desertion of him she has obtained food and supplies on his credit from the Commissary of the United States Army; he further says that he has not known the whereabouts of his wife and child since said desertion but he has through counsel for both parties endeavored to effect a reconciliation and he has further offered to pay the plaintiff One Hundred and Sixty Dollars a month, which she refused to accept, insisting that he pay her One
Hundred and Seventy-five Dollars, and also pay her
16 Eight Hundred Dollars in cash, give her his automobile, the household furniture and the custody of their infant child, which defendant refused to do.

12. Answering paragraph twelve, this defendant says that if the plaintiff persists in living separate and apart from him, he is informed, believes and therefore avers that he will lose the allowance to a married officer for rent amounting to Eighty Dollars (\$80.00) per month; the allowance of Thirty-six Dollars (\$36.00) per month for sub-

sistence; and the allowance in the form of flight compensation of One Hundred and Five Dollars (\$105.00) per month.

And having fully answered, this defendant respectfully states to the Court that the home provided by him for the plaintiff and the infant child of the parties hereto has been at all times and now is open to receive the plaintiff and their infant child and the defendant is ready, willing, and anxious for them to return to him, to be by him supported and maintained in accordance with their station in life.

Defendant accordingly prays:

1. That plaintiff's Motion for support and maintenance pendente lite be overruled and denied and discharged.

2. That the Bill of Complaint be dismissed.

3. That the care and custody of the infant child of the parties hereto be awarded to defendant. That the plaintiff will be required to return to defendant his said automobile and his personal effects and that such other and further relief may be granted herein as the nature of the case may warrant and to the Court may seem fit and proper.

17

PAUL C. WARNER,
Defendant.

ALBERT D. ESHER,
Attorney for Defendants

DISTRICT OF COLUMBIA, ss:

Paul C. Warner, being on oath, duly sworn, deposes and says that he has read the foregoing Answer by him subscribed and knows the contents thereof; that the matters and facts therein stated of his own knowledge are true and those therein stated on information and belief, he believes to be true.

PAUL C. WARNER.

Subscribed and sworn to before me this Eleventh day of April, 1924.

MORGAN H. BEACH,
Clerk,
By F. E. CUNNINGHAM,
Ass't Clerk.

Stipulation.

Filed May 21, 1924.

* * * * *

It is hereby stipulated and agreed between Counsel for the plaintiff and Counsel for the defendant that the Answer of the defendant, Paul C. Warner to the Rule, filed herein on April 11th 1924, be also considered and taken as
 18 an Answer to the Bill of Complaint filed herein.

LEVI H. DAVID,
 HARLAN WOOD,

Attorneys for Plaintiff.

ALBERT D. ESHER,
 JOHN H. ZABEL,

*Attorneys for Defendant.**Motion for Authority to Amend Answer.*

Filed March 23, 1926.

* * * * *

Now comes the defendant, Paul C. Warner, by his attorney in the above entitled cause, and moves the Court to allow him to file the Amended Answer hereto attached, wherein the said defendant, by way of Cross Bill, prays for affirmative relief as in said Amended Answer set forth.

WILLIAM E. LEAHY,
Attorney for Defendant.

Levi David, Esquire,
 McLachlen Building,
 Washington, D. C.:

Kindly take notice that the above entitled motion will be called to the attention of Mr. Chief Justice McCoy at 10:00 o'clock A. M. on Friday, the 26th day of March, 1926, or as soon thereafter as counsel can be heard.

WILLIAM E. LEAHY,
Attorney for Defendant.

19 Service of the above entitled Motion acknowledged
this 23rd day of March, 1926.

LEVI H. DAVID,
Attorney for Plaintiff.

Order.

Filed May 21, 1926.

* * * * * *

Upon consideration of the motion of the plaintiff filed herein to strike the amended answer of the defendant filed herein April 26, 1926; and the consent of counsel for defendant, endorsed hereon, it is by the Court this 21st day of May, 1926.

Ordered: That the amended answer of defendant, filed April 26, 1926 herein, be and the same is hereby stricken from the files and

Upon consent of counsel for plaintiff, endorsed hereon, it is further ordered: that the defendant be and he is hereby granted leave to file in lieu of said answer of April 26, 1926 his amended answer filed upon the 21st day of May, 1926.

By the Court:

WALTER I. McCOY,
Chief Justice.

I consent to motion to strike answer of April 26/1926.

WILLIAM E. LEAHY,
Att'y for Defendant.

I consent to order granting filing of amended answer May 21, 1926.

LEO W. SIMON,
Att'y for Pltff.

20 *Amended Answer of Paul C. Warner.*

Filed May 21, 1926.

* * * * * *

Now comes Paul C. Warner, the defendant in the above entitled cause, and with leave of court first had and obtained files this his amended answer to the petition of the

plaintiff filed herein for divorce a mensa et thoro from him, the said defendant, and the care, custody and control of the infant daughter of the plaintiff and defendant, and for the other relief prayed for in the petition, and respectfully shows to the court as follows:

1-11. The plaintiff adopts as and for the first eleven paragraphs inclusive of this his amended answer the first eleven paragraphs inclusive of his original answer herein.

12. This defendant further respectfully states that because of the subsequent unjustifiable and abusive treatment of him on the part of the plaintiff, particularly with respect to the times and occasions when he, this defendant, would attempt to call upon his little daughter in accordance with the right given him under the order of this court, as well also as because of the false and malicious language used of and concerning him by the said plaintiff in her answers to the rule to show cause why she should not be adjudged in contempt of court, duly filed in this cause, he, the said defendant, has become convinced that it is impossible for them to resume marital relations or to attempt to reestablish a common home together. That whereas, for the sake of their daughter and of the love he once bore toward the plaintiff, this defendant was willing to forgive

and forget the many past wrongs committed toward
21 him by the plaintiff at the time his original answer was filed herein, he has now become convinced that the home which he had provided for her and their child and which she, the said plaintiff, broke up by her wilful desertion of him could not be reestablished with any hope of success.

And by way of cross-bill and affirmative relief said defendant respectfully shows to the court:

13. That, as hereinbefore set out in paragraph 7 of his original answer and herein adopted, the plaintiff without cause or excuse wilfully deserted him, the said defendant, on the 12th day of March, 1924, and has continued and persisted in such desertion ever since. That hitherto on two separate occasions the plaintiff likewise without cause or excuse had abandoned the defendant, subjecting him to humiliation, embarrassment and worry. That throughout

their married life the said plaintiff at all times compelled the defendant to give in to her every whim and fancy, frequently using toward him and his family the vilest and most abusive epithets, using language unfit to repeat and subjecting him to assaults and displays of temper which sometimes this defendant was unable to understand and often with difficulty to protect himself against. That she was extravagant in her demands and expenditures of defendant's money, keeping him continuously in debt and causing him great mental distress by reason of his depleted finances. That for several months before the 12th day of March, 1924, when she left the defendant, without cause or excuse, as aforesaid, her manner had become more abusive and her

22 conduct more difficult to endure, but that for the sake of their common home and their daughter the defendant was willing to and did go to the greatest length in order to preserve the said home for the sake of their daughter and for the plaintiff for whom he then still entertained affection and love. That notwithstanding the said plaintiff had deserted him on other occasions, as hereinbefore set out, he always went to her when he learned where she had gone and besought her to return in order to preserve the home, as aforesaid, for their child. However, this defendant avers that for approximately six months before the plaintiff abandoned him, as hereinbefore set out, she entered upon a course of conduct wherein she refused to perform her duties as a housewife and to cook, sew or otherwise cooperate with the defendant in making a home; that she frequently absented herself therefrom and the baby; that she used toward him the most vile, obscene and vulgar language, applying obscene allusions to the defendant's mother and his sister; that she showed towards him an arrogant, contemptuous and vindictive spirit, calling him all sorts of vile names and visiting upon him insolence and opprobrium. That your defendant endured this with difficulty, but continued on trusting that the plaintiff might reform and that the home still might be preserved. However, as hereinbefore set out, and on the date hereinbefore mentioned, this defendant avers that the plaintiff deserted and abandoned him without cause or excuse, as hereinbefore

set out, taking with her much of the furnishings belonging to defendant and thereafter incurring several bills on his credit.

Wherefore, the premises considered this defendant prays:

23 1. That a United States writ of subpœna be issued herein directed to the plaintiff, Natalie A. Warner, commanding her to be and appear in this court on a day certain to be named in said subpœna, and answer the exigencies of this cross bill.

2. That the petition of the plaintiff filed herein be dismissed.

3. That a final decree may be entered herein granting to the defendant a divorce a mensa et thoro from the plaintiff and awarding to him, the said defendant, the care, custody and control of the daughter of the plaintiff and defendant.

4. And for such other and further relief as the nature of this case may require and to the court may seem just and proper.

P. C. WARNER.

WILLIAM E. LEAHY,
Atty. for Defendant.

Paul C. Warner, being first duly sworn deposes and says that he has read the foregoing answer and cross bill by him subscribed and knows the contents thereof: that the matters and things therein stated of his personal knowledge are true, and those things therein set forth upon information and belief, he believes to be true.

P. C. WARNER.

24 Subscribed and sworn to before me this — day of April, 1926.

T. G. ELLYSON, [SEAL.]
Commander, U. S. N., Executive Officer.

TGE.

Witnesses:

C. L. ALEXANDER,
Lt. A. S., U. S. Navy.
A. R. SIMPSON,
Lt. Com., U. S. N.

Reply of Natalie A. Warner to Defendant's Amended Answer and Cross-Bill.

Filed May 28, 1926.

* * * * *

The plaintiff, Natalie A. Warner, for reply to the amended answer and cross bill filed herein by the defendant May 21, 1926, respectfully shows to the Court as follows:

1 and 2. The defendant having admitted the allegations contained in Paragraphs 1 and 2 of the bill of complaint, the plaintiff is advised that no reply is necessary.

3. Answering Paragraph 3 of said amended answer the plaintiff denies that an antenuptial agreement was entered into, as alleged by the defendant. Plaintiff states that after the marriage ceremony was performed, the plaintiff was required to sign a written statement to the effect that if issue were born of the marriage they would be reared in the Roman Catholic Church. Plaintiff further alleges that the child of the plaintiff and defendant was christened in the Roman Catholic Church.

4 and 5. The plaintiff denies that she, without
25 justification, cause or excuse and without notice to the defendant, left the home provided by the defendant for them and took the child with her; and the plaintiff avers that the defendant ordered her out of the house and she was compelled to leave because of his cruelty to her, as hereinafter more fully appears.

6. Answering Paragraph 6 of the said amended answer, plaintiff avers, notwithstanding the denial of the defendant that the said defendant did strike the plaintiff on the occasion mentioned in the bill of complaint as well as on other occasions and did apply opprobrious epithets to the plaintiff as alleged in the bill of complaint. The plaintiff further denies that the defendant has always treated her with consideration and gratified her demands, but on the contrary alleges that the defendant's conduct was so cruel that she was forced to leave him as alleged in her bill of complaint.

7. Answering Paragraph 7 of the defendant's amended answer, the plaintiff denies that on that date or at any

other time the conduct of the plaintiff was abusive, or in any way such as to justify the defendant leaving their home.

Further answering said Paragraph 7, the plaintiff denies that on January 17, 1924, she left the home of the plaintiff and the defendant without cause or justification; and the plaintiff further alleges that on said occasion the defendant struck the plaintiff and ordered her to get out of the house. Plaintiff denies that defendant persuaded her to return and conduct herself as a dutiful wife, but alleges that she has

26 always acted as a dutiful wife and that the defendant on the occasion in question persuaded the plaintiff to return to their home only because of his promises, bound in the presence of other persons and in letters, that he, the defendant, would conduct himself in a proper manner and would treat the plaintiff with kindness.

Further answering said Paragraph 7, plaintiff alleges that she was ordered to leave the home of the plaintiff and the defendant on March 13, 1924. She denies that she deserted the defendant, or left without notice, reason or excuse and alleges that she was forced to leave the said home by reason of the cruelty of the defendant and of his ordering her so to leave.

Further answering said Paragraph 7 the plaintiff alleges that the facts regarding the said articles referred to therein were stated to the Court in an affidavit executed by her April 16, 1924, and filed April 17, 1924, in this cause in opposition to defendant's notice of the submission of a proposed decree; and plaintiff hereby incorporates said affidavit by reference into this her reply to the amended answer of the defendant.

8 and 9. Answering Paragraphs 8 and 9 of the defendant's amended answer, plaintiff alleges that she has done her utmost to live peaceably with the defendant, but that the defendant by his neglect, maltreatment and abuse of the defendant forced the plaintiff to leave their home.

Plaintiff further alleges that the said automobile has not been used by the plaintiff for sometime on account of the fact that it is not in good running condition and is very
27 old, and the plaintiff believes that it is worth not more than \$50.00.

10. Answering Paragraph 10 of said amended answer, the plaintiff again alleges that the defendant frequently returned to his home late at night in an intoxicated

condition and some times sick from drinking; and the plaintiff further states that at various times she attended the defendant and nursed him when he was in such condition.

11. Answering Paragraph 11 the plaintiff denies that she deserted the defendant without cause and alleges she was ordered to leave their home as stated in the bill of complaint and elsewhere in this reply, and that she was compelled so to leave on account of the cruel and abusive treatment to her by the defendant as herein and in her bill of complaint alleged.

12. Answering Paragraph 12 of said answer as amended, the plaintiff denies that the defendant will lose the allowances for rent and subsistence and flight compensation he now receives.

Further answering said Paragraph 12 the plaintiff denies that she has used unjustifiable or abusive treatment toward the defendant, either with respect to the time and occasions when the defendant would call upon their daughter, or at any other time; and the plaintiff denies that she used false and malicious statements of or concerning the defendant in her answer to the rule to show cause why she should be adjudged in contempt of court filed herein, or at any other time.

The plaintiff further denies that she broke up the home of the plaintiff and the defendant or that she lawfully deserted the defendant but on the contrary avers that
28 she was forced to leave the home of the plaintiff and defendant on account of cruel and ill-treatment of her by the defendant and because the defendant ordered the plaintiff and their baby to leave their home, as hereinbefore set forth.

And by way of answer to the cross-bill of the defendant the plaintiff respectfully shows to the Court:

13. Answering Paragraph 13 of said amended answer, the plaintiff denies that she willfully deserted the defendant, without cause or excuse, on the 13th day of March, 1924, or at any time, but states as aforesaid that she was forced to leave the defendant on account of his cruelty and ill treatment, he, the defendant, having on the occasion of March 12, 1924, ordered the plaintiff to leave the house. The plaintiff denies that throughout their married life she compelled the defendant to give in to her every whim and

fancy; she denies that she used vile and abusive epithets towards the defendant and his family, that she subjected the defendant to assaults and displays of temper, that she was extravagant in her demands and expenditures, or that her manner or conduct was abusive toward the defendant; and she denies that defendant was willing to or did make any sincere efforts to preserve the said home. And the plaintiff further denies that for approximately six months before March 13, 1924, when she was obliged to leave the defendant, she refused to perform her duties as a housewife or that she frequently absented herself from the said home and from her baby, and she denies that she
29 used toward the defendant any vile, obscene or vulgar language, either against the defendant or his mother or sister or any member of his family.

And further answering said Paragraph 13, the plaintiff states that she has always endeavored to preserve the home of the plaintiff and the defendant; and she further states that she has always performed her household and domestic duties and that from the time plaintiff and defendant took up their residence in the District of Columbia, in about April, 1922, until about January, 1924, the plaintiff did her own housework and had no domestic servant to assist her, except that on September 30, 1922, a maid assisted in moving to another house, and in the month of October, 1922, about three weeks after the birth of the daughter of the plaintiff and defendant, a maid was employed by the half-day for about two weeks, and in January, 1924, when the plaintiff was informed by her physician that she should refrain from performing arduous household tasks on account of her health, defendant allowed a maid to be hired.

And the plaintiff further states that she did not absent herself from the home of the plaintiff and defendant frequently, but on the contrary avers that she left the said house very seldom, her domestic duties, especially those of taking care of the child of the plaintiff and defendant, having confined her to the house most of the time.

Wherefore, the premises considered, the plaintiff prays:

1. That the cross bill of the defendant filed herein be dismissed.
- 30 2. That a final decree may be entered herein granting to the plaintiff a divorce *a mensa et thoro* from

the defendant, and awarding to the plaintiff the care, custody and control of the infant daughter of the plaintiff and defendant.

3. That a final decree may be entered herein requiring the defendant, Paul C. Warner, to pay the plaintiff a proper and adequate sum of money permanently for the support and maintenance of the plaintiff and the infant daughter of the plaintiff and defendant.

4. And for such other and further relief as the nature of the case may require and to the Court may seem just and proper in the premises.

NATALIE A. WARNER.

Plaintiff.

DISTRICT OF COLUMBIA, ss:

Natalie A. Warner, being first duly sworn, deposes and says that she has read the foregoing reply by her subscribed and knows the contents thereof; that the matters and things set forth in said petition as of her personal knowledge are true and those statements therein set forth as upon information and belief, she believes to be true.

NATALIE A. WARNER.

31 Subscribed and sworn to before me this 28th day
of May, 1926.

FRANK E. CUNNINGHAM,

Clerk,

By M. LEE ASHFORD,

Asst. Clerk.

LEVI H. DAVID,

LEO W. SIMON,

Attys. for Plaintiff.

Decree Dismissing Bill, &c.

Filed July 20, 1926.

* * * * *

This cause came on to be heard on plaintiff's petition duly filed and praying for a divorce *a mensa et thoro* from the defendant herein and the custody of their minor child. the amended answer of said defendant to said petition and his cross bill praying for a divorce *a mensa et thoro* from

the plaintiff and the custody of the said minor child, and the parties having been heard upon said pleadings and evidence having been taken in open Court in support thereof, now, therefore, it is by the Court this 20 day of July, 1926.

Adjudged, ordered and decreed that the petition of the plaintiff, Natalie A. Warner, be and the same is hereby dismissed, and it is further

Adjudged, ordered and decreed that the said Paul C. Warner is hereby granted a divorce *a mensa et thoro* from the plaintiff, Natalie A. Warner, and it is further

Adjudged, ordered and decreed that the defendant shall pay to the plaintiff Eighty-seven and 50/100 Dollars (\$87.50) on or before July 31, 1926, being balance due
32 the plaintiff for maintenance under previous order of court; and it is further

Adjudged, ordered and decreed that the permanent custody of the minor child of said parties, Helen Adrienne Warner, be and it is hereby granted to the plaintiff, Natalie A. Warner, but the defendant, Paul C. Warner shall have the custody of said minor child on Wednesday of each week between the hours of twelve o'clock noon and six o'clock P. M., and on the first and third Saturdays of each month and on the second and fourth Sundays of each month, between the hours of twelve o'clock noon and six o'clock P. M., and the defendant shall pay to the plaintiff the sum of Seventy-five Dollars (\$75.00), beginning on August 1, 1926, and a like sum thereafter on the first day of each month for the support and maintenance of said minor child, and it is further

Adjudged, ordered and decreed that the defendant, Paul C. Warner, pay within a period of ninety (90) days to the plaintiff for Levi H. David, Esquire, and Leo W. Simon, Esquire, the sum of Two Hundred and Fifty Dollars (\$250.00), as counsel fees for services rendered the plaintiff in this Court, and it is further

Adjudged, ordered and decreed that the defendant, Paul C. Warner, pay within a period of sixty days to the plaintiff, Natalie A. Warner, the following sums, to-wit:

M. D. Carmichael, Esquire, counsel fee representing plaintiff in the taking of deposition by defendant at West Palm Beach, Florida.....	\$25.00
33 Landis, Fish, Hull & Whitehair, Esquires, counsel fee representing plaintiff in the taking of depositions by defendant at Deland, Florida.....	50.00
Amount paid for copy of said testimony.....	6.00
William Fisher, Esquire, counsel fee representing plaintiff in the taking of depositions by defendant at West Palm Beach, Florida.....	25.00
For amount paid Pearl E. Bell, Notary Public, for taking deposition in Pensacola, Florida.....	12.50
For amount paid Wm. S. Schoeni, Deputy U. S. Marshal, for serving writ of Habeas Corpus at Lorton, Virginia.....	7.15

and it is further adjudged, ordered and decreed that the defendant pay the costs of the Clerk of this Court, and the Marshal's and witnesses' fees, to be taxed by the clerk.

WALTER I. McCOY,
Chief Justice.

Memo. Noting Appeal of Both Plaintiff and Defendant.

From so much of the said decree as provides that the permanent custody of the minor child of said parties be granted to the plaintiff Natalie A. Warner, the defendant, Paul C. Warner, notes an appeal in open court to the Court of Appeals of the District of Columbia and from so much of said decree as dismisses the petition of the plaintiff and grants a divorce *a mensa et thoro* to the defendant from the plaintiff, the plaintiff also notes an appeal in open court to the Court of Appeals of the District of Columbia; and the bond for costs of each appellant is hereby

34 fixed in the sum of one hundred dollars or a cash deposit of fifty dollars.

July 20, 1926.

WALTER I. McCOY,
Chief Justice.

Memoranda.

August 7, 1926.—Undertaking on appeal for \$100 approved and filed.

August 9, 1926.—Order extending time to file statement of evidence to August 31st, 1926, filed.

August 30, 1926.—Order further extending time to file statement of evidence to September 7, 1926, filed.

Statement of evidence filed.

Assignment of Errors.

Filed August 31, 1926.

* * * * *

Now comes the defendant, Paul C. Warner, by his attorney, and assigns as errors committed by the Trial Court in the hearing of this cause, the following:

1. The court erred as a matter of law in awarding the custody of the infant child of the parties herein to the plaintiff.

35 2. The court erred in that its decree in awarding the custody of the infant child of said parties herein to the plaintiff, constituted in law an abuse of discretion upon the part of the court in regard to awarding the custody of said child.

3. The court erred in holding as matter of law that he had the authority to award the custody of the infant child of the parties herein to the plaintiff, having found against the plaintiff on her original bill and granted the cross-bill of the defendant.

4. The court erred in holding upon the evidence in this case that the plaintiff was a proper party to whom to award the custody of the infant child of said parties herein.

WILLIAM E. LEAHY,
HARRY A. HEGARTY,
Attorneys for Defendant.

Service of a copy of the above is acknowledged this 31st day of August, 1926.

RAYMOND NEUDECKER,
Attorney for Plaintiff.

Designation of Record.

Filed August 31, 1926.

* * * * *

The Clerk will please prepare transcript of record upon the appeal of the Defendant herein, and the following papers are hereby designated as necessary to be copied:

1. Original bill of complaint, filed April 8, 1924.
- 36 2. Answer to rule to show cause, filed April 11, 1924.
3. Stipulation allowing answer to rule to stand as answer to original bill, filed May 21, 1924.
4. Motion to amend answer, filed March 23, 1926.
5. Order allowing amendment, filed May 21, 1926.
6. Amended answer and cross-bill, filed May 21, 1926.
7. Plaintiff's reply to amended answer and cross-bill, filed May 28, 1926.
8. Decree dismissing plaintiff's bill, granting defendant's cross-bill and custody of child to plaintiff.
9. Memo.: Appeal of defendant, noted in open court and the amount of undertaking fixed.
10. Memo.: Filing of undertaking by defendant.
11. Memo.: Order extending time within which to file statement of evidence to August 31, 1926.
12. Memo.: Order further extending said time to September 7, 1926.
13. Memo.: Filing of statement of evidence by defendant.
14. Memo.: Excepting of statement of evidence of defendant.
15. Statement of evidence of defendant.
16. Assignment of errors.
17. This designation.

WILLIAM E. LEAHY,
HARRY A. HEGARTY,
Attorneys for Defendant.

37 Service of a copy of the foregoing is acknowledged this 31st day of August, 1926.

RAYMOND NEUDECKER,
Attorney for Plaintiff.

Memoranda.

September 12, 1926.—Pltffs.' proposed amendments to bill of exceptions filed.

October 6, 1926.—Statement of evidence signed in duplicate (McCoy, C. J.).

38 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,

District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 37, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 42435 in Equity, wherein Natalie A. Warner is Plaintiff and Paul C. Warner, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of December, 1926.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

39 In the Supreme Court of the District of Columbia.

Equity. No. 42435.

NATALIE A. WARNER, Plaintiff,

vs.

PAUL C. WARNER, Defendant.

Raymond Neudecker, Esquire,
Attorney for the Plaintiff,
Columbian Building,
Washington, D. C.

SIR:

We attach hereto copy of the Statement of the Evidence in the above entitled cause, the original of which was this date filed, and which we will present to Mr. Chief Justice McCoy for settlement on Wed. the 29th day of September, 1926, at ten o'clock A. M. or as soon thereafter as counsel can be heard.

WILLIAM E. LEAHY,
HARRY A. HEGARTY,
Attorneys for Defendant.

August 30, 1926.

Service acknowledged this 30th day of August, 1926.

RAYMOND NEUDECKER,
Attorney for Plaintiff.

W. C. A.

40 In the Supreme Court of the District of Columbia.

Equity. No. 42435.

NATALIE A. WARNER, Plaintiff,

vs.

PAUL C. WARNER, Defendant.

Whereupon to maintain the issues upon her part claimed the plaintiff called **Elizabeth Batt** who testified that she lived at 3115 14th Street Northwest, Washington, D. C.,

and was a hairdresser; that she had known Mrs. Warner for two years; that Mrs. Warner came to her home and lived there with the child in February 1924 for one week; that she then went with a friend of hers whose name the witness did not know. Mrs. Warner returned and lived with her again two or three days in March, 1924; her clothes were not very good; the witness did not observe her physical condition and could not testify with reference thereto. Mrs. Warner paid her each time she was there.

41 Whereupon to maintain the issues on her part joined, the plaintiff, **Natalie A. Warner**, after being first duly sworn, testified as follows: That she was the plaintiff in the case and the wife of Lieutenant Paul C. Warner, and was married October 11, 1920, in St. Lawrence Catholic Church, Brookline, Mass., by the Reverend Father McManus; that one child, a daughter, was born of the marriage, who is now between the ages of three and four years; that just after the marriage she remained in Boston for two weeks, her husband returning immediately to Pensacola where he was then stationed on duty at the Naval Air Station at Pensacola, Florida; that she followed him down there approximately two weeks later and they lived together at the Northhill Apartments in Pensacola for a period of several months, when they then moved, approximately in May, 1921, to the Naval Air Station at Pensacola, where quarters were provided for them; that her husband was in the Naval Air Service and was a senior grade lieutenant.

42 They next moved to policeman Foley's home at 1838 Ingleside Terrace where they lived from October, 1922 until about March, 1923; they did not get along there at all, because the baby did not have any food and the place was poorly heated; they quarreled and when she asked defendant for things he called her names and said if she did not like she could get out, calling her a dirty foreigner and names she would not use, very foul names which she did not want to repeat but which upon request she wrote upon a piece of paper which was handed to the Court and offered in evidence, as follows:

“Go fuck yourself—you G— D— S— of a B—.”

In January, 1924 he told her to leave, which she did; this occurred while they were living at 3032 Que Street. In the previous September, 1923, the defendant, however, had left her, remaining away for over a month because he had struck her and she had screamed and the janitor had come to help her and then told everybody in the apartment whom he knew, that defendant was a wife beater; defendant, therefore, would not stay there and stated he would not live there any longer; this occurred while they were living at 1915 16th Street. The reason he struck her was that he had been away all day and did not come home until about nine o'clock. He left her with only fifty cents to buy dinner with and upon his return he was starting an argument and she told him that she could not live on fifty cents; whereupon, he stated that if she did not like it she could get out; he called her bad names. She did not know the difference between cursing and swearing, but she stated he called her bad names. He then threw her down on the floor, she ran to the window to scream for help, he then went to the window and put the window down, she screamed again and was trying to get the door open to run to the door and as she put her hands on the door knob to turn it he pulled her by the hair, she had long hair then. This she said occurred September, 1923, at 1915 16th Street where they had been living from March until October. The janitor whose name was Bob Kelly came to the apartment then, that the defendant would not let him in at first, and so when she opened the door a little the janitor put his foot in so that defendant could not close the door again, then the janitor came in. The defendant informed the janitor that he was a naval officer and asked what he meant by coming in there and interfering with his family affairs, to which the janitor replied that he was the janitor and that if

43 anything went wrong he had the right to go into the apartment, stating that there was a policeman waiting downstairs to have him arrested; that she did not know whether there was a policeman there or not, but she had asked the janitor to get a policeman; whereupon the defendant asked the janitor not to bring a policeman and promised that he would not strike her any more and that he would take her to the football game in New York; whereupon the janitor informed the defendant that every-

one in the apartment knew that he beat his wife; that two weeks ago he had struck her and everybody knew it; whereupon the defendant asked the janitor if they really did know it and he said that everybody did know it; whereupon, he again promised that he would not strike her any more if he, the janitor, would not call a policeman; whereupon the janitor left. This was about nine o'clock at night. Whereupon, the defendant left that very night, said he would not live with her unless she moved to another apartment, that he did not care to live where everybody knew he was striking her. The baby was not then quite a year old. On the 5th or 7th of October of that year they moved to 3052 Que Street where they lived until March when they finally separated. She left upon this occasion, but defendant told her to leave, saying "get out and take your brat with you, I don't want anything." Again, he uttered such words which the witness would not repeat but wrote down on a piece of paper which was handed by her to her counsel and by him to the Court who read the same, and they were then offered in evidence.

On the occasion he told her to get out he came in about twelve o'clock at night after he had been drinking, and said "get out of here you dirty foreigner, I'm tired of you and I'm not going to support you for the rest of my life; there are eight women to every man in the District of Columbia, think of the good times I could have; why should I stick to you, especially a dirty foreigner like you." Thereupon she put her coat on, she did not have any stockings on, but stepped in her shoes and was running to the police station when the defendant ran after her, grabbed her, and said not to be afraid of him and got her back to the apartment. She left the next day in the afternoon. This was March 13, 1924. Then she filed her suit. In all there had

44 been three separations, that is, in which the plaintiff left defendant. The witness was acquainted with

both Mr. and Mrs. Hanna, and on the occasion of the separation in January, 1924, she informed the Hannas of the fact that she had left, telling them that the defendant would not buy any clothing for the baby or her, that they were poorly clothed, and very cold; that there was something wrong with the radiator in the apartment, and the baby did not have sheets and pillow cases. Upon that occasion Mr. and Mrs. Hanna finally effected a reconciliation

between the two, the defendant going down on his knees, begging her forgiveness, stating that he would not call her any more names, would treat her right, buy her clothes, and curtains for the house, etc., stating that he would not "do it any more" and if he did that she could file suit; the defendant also told Mr. Hanna that if he did not keep his promise, he and Mrs. Hanna could be a witness for the plaintiff. Upon that occasion the defendant gave her a check which she took to the bank and it was returned because there were no funds. This was a check for \$50 which the defendant subsequently made good, so was another check for \$150 which was not made good and which the bank refused to cash, stating there were no funds. She thought the date of this reconciliation was January 15, 1924. After this reconciliation the defendant did not keep his promise. He called her a low down Russian foreigner, and a dirty foreigner. Before her marriage he knew that she was Russian. She has letters which she gave her counsel, she thought, to prove it, and telegrams. He called her half nigger and everything. He called her a low down Russian and half nigger. Had always made her feel that she was no good, low down, that Russians were unrecognized. Told her that he would have her deported, that he was a naval officer, and said that anything he said would be all right, saying "I am a naval officer and you are only a Russian, I will have you deported." The first time he cursed her and abused her was when she became in a delicate condition. He did not want a baby but did want an unlawful operation. Their child was born October 1, 1922, and was named Adrienna, she having lost her first baby after having been pregnant about two months. She lost this child through an unlawful operation because defendant told her that if she did not go under the operation as he told her he would get men off the street to swear and state they were intimate with her and would deny the baby, saying that she did not know, she was ignorant, and had not been in this
45 country long enough, and that some people in this country earn their living that way. This occurred in Pensacola. She did as she was directed, defendant giving her \$400. She went to Boston to the doctor whom he suggested. He was not with her, but she remained there two or three weeks. She wired him fully about the matter be-

cause the doctor wanted to charge her more, and she wired to tell the defendant that she needed \$100 more, and he sent her \$100 by Western Union. The operation was performed in Boston but she was sent to the hospital in Pensacola, the defendant becoming very angry because she came back too soon. She thinks this occurred in May, 1921. She became pregnant again about six months after she lost her first baby. The child was later born October 1, 1922, at Garfield Hospital in Washington, under the superintendence of Dr. W. Sinclair Bowen. She left the hospital on the ninth day after the birth because defendant came in to see her in the hospital and kept nagging her about the expenses, and the burden that she had brought on to him with the baby, and he nagged her so much that she did not feel well and finally got the doctor's permission to go, upon the understanding that she was to stay in her room until the baby was three weeks old. As soon as she came home, however, the defendant would not hire a servant or anyone to help her and she was compelled to go to work immediately, he stating that he did not have any money. Finally after she fainted in the kitchen one morning after getting his breakfast he got servants for two weeks. One day she asked him if he would not get a cup of hot coffee, that she did not feel very strong, and he said "you — lazy whore you are just a bluff, you are not sick, you have a long time to wait until I get you a cup of coffee." She used to nurse the baby all through the night, one, two, three, and six o'clock in the morning, and when she would awake the defendant he would call her names, telling her to get out and take the brat with her, and that if it was not for the brat she would not have any trouble, the whole trouble starting because she had the baby. Thereupon the witness identified certain letters which were marked Plaintiff's Exhibit 1 to 1-J for identification. Thereupon her attention was drawn to the fact that in the letter she was addressed as My dear Janet, and the witness replied this was not her name, but the defendant used to call her that as an endearing term whereupon several other letters were shown the witness, and after having been identified as in the handwriting of
46 defendant they were marked as exhibits 1-A 1-L and 1-N. The last two letters she stated were received in January, 1924, after she left the house. On the night of

March 12, 1924, when the defendant drove her and her child out of the house, the servant was present, and on the following day when he told her to get out, the servant was also present and heard him order her from the home. The servant's name was Ontronette Hawkins. She had come to work in January, 1924, and she took her with her when plaintiff left the home, and went first to Mrs. Batts, a hairdresser. She had no home and no money at the time and although she did not know Mrs. Batts except that she shampooed her hair she went to her and asked her to take her in, which Mrs. Batts did for about one week. The defendant then sent Mr. and Mrs. Hanna after her. The defendant used bad language toward her in the presence of the colored servant, which plaintiff was sure the servant heard. Thereupon the witness again wrote down on a piece of paper, which in turn was handed to the Court and offered in evidence, the words "damn bitch," which she stated were the words used to her by defendant in the presence of her servant. How many times, she could not say. He used to come home drunk, and he used to stay out all night sometimes. He came home drunk at least an average of once a week, and at Pensacola drank whiskey in her presence. In Washington she does not know whether it was his whiskey or not, but it looked very red and was a kind of liquor. It used to make him sick and when he was drinking he used to pull her by the hair. When she separated from the defendant the third time she went to live with Mrs. Shepley, 2827 27th Street, where she lived from March 15th to about April 22nd, 1924, with the baby. On the day following her leaving on March 13th she had but 23 cents in her pocket, and went to the Navy Department where she saw the defendant and asked him for some money. At first he refused, stating that she would have to get money from the Court. She then threatened to go to the Admiral or whoever was in charge. The defendant then gave her \$50, to which she stated that it was not sufficient and that he did not care if she starved and would have to go to Court. Defendant then came down to the bank and he gave her a check for \$100, which she cashed. This did not last very long because she was going to see her attorney almost every day, and kept a servant. After leaving the Shepley home she lived with Mrs. Bell at 1802 16th Street, where she had two rooms, the

47 use of the kitchen and the living room. She lived there until December of 1924, when she moved to an apartment on Oregon Avenue. She had paid \$25 or \$35 a month to Mrs. Bell and \$50 rent for the Oregon Avenue apartment. She lived in the latter place until March, 1925, when she rented a house at 1818 16th Street, into which she moved, paying \$55.50 rent. She occupied the entire house and sublet the top floor for \$30. She was still living there with Mrs. Dudley who lived with her. She had a few pieces of furniture, very little, a rug, three chairs, three tables, lamp, sewing machine, and dresser. Some of these she took from the apartment; other articles she bought from the Herman Company. She did not take the baby carriage when she left the house although she had asked Mr. Warner several times for it, but he had refused to give it to her, saying she had alimony now and could go and buy one. The baby carriage was left at the apartment and when she went there the apartment was locked and she could not get it. Last summer on a Sunday when he came to visit the child after it had had its tonsils removed she had asked him particularly for the baby carriage, but he stated that he had sold it. Witness further stated that defendant often struck her with his fists on her back and in the face with his open hand. She could not tell how many times, he had done it so often. He struck her when she was in a delicate condition, and she was treated in Pensacola, Florida, by Dr. Payne; she called him to the house, and he put adhesive plasters on her side; she thought she had a broken rib, and had been in agony from the blow defendant struck her. The doctor stated it was not broken but just hurt. She was all bruised. Defendant stayed out all night at least a dozen times, if not more. He would not tell her where he had been although she asked him, he stating it was none of her business. In Pensacola they bought an Oldsmobile roadster from part of her money and the rest Mr. Warner's, she contributing \$300 from funds which she had saved before her marriage. She did not know how much defendant paid for the car, but thought it was around eight or nine hundred dollars; later this car was traded in for an Oldsmobile coupé which they brought to Washington, she driving the car to Washington.

Thereupon, plaintiff offered in evidence the letters theretofore identified, and they were passed to the Court to be

read. Upon cross-examination the witness testified that she had been married in October, 1920, in Brookline, 48 Mass., and when she came to this country she settled in Boston, living with friends by the name of Wardman. From 1914 down to the time of marriage she had lived in Boston and a portion of that time she had trained as a nurse, entering training in 1916, after Russia was in the war, and her mother could not send her money. From 1916 to 1919 her address was in Boston, and she trained at Dr. Christian's Hospital at 401 Marlboro Street, Boston. She finished training in 1919 and worked as a nurse, during which period of time she became familiar with the city and met other doctors who came in the hospital where she worked. She knew several doctors, taking employment from them as a nurse, and she was pretty steadily employed as such. She first met the defendant in December, 1917 when he first came into the service, and in April, 1918 he began to pay court to her. At that time he was "very nice" and expressed himself to her that he was greatly in love with her and could not live unless he married her. The telegrams offered in evidence were sent to her when she had sent him word she was dying. He was then in the service at Pensacola and was worrying about her condition, and would telegraph not only her but Mrs. Borgman very often to see how she was. She replied to these telegrams and then the defendant came on to see her. He did not find her dying. He came up in September and they were married on October 11, 1920. The witness could not recall when it was he came on in September, but having been shown the telegram dated September 27th "spare no expense on account expert medical attention do everything possible I am leaving for the north on this noon train. Will arrive Wednesday afternoon. Wire me condition care of Ticket Agent Union Station, Atlanta, Georgia, tonight, and write me condition care Ticket Agent, Washington, tomorrow noon." She then stated that he came to Boston arriving September 28th. When the defendant arrived she was up walking around. When asked why she had wired him that she was dying she stated that Mrs. Borgman had wired him, and when asked why she had permitted Mrs. Borgman to wire defendant that she was dying, she stated that defendant was coming that month to marry her and she wanted

to wait for a little longer. They had been engaged then for two years, she thought, and were writing constantly back and forth. The way the defendant acted she thought he loved her and she loved him too. When asked if Janet was not her name she replied that it was not, that she had a middle name which was Adrienna, the name of her
49 father, that Janet was not her legal name. When asked how defendant learned the name Janet she said from her friends who knew her as Janet, and that many of her friends knew her by that name in the hospital and that her friends and social acquaintances called her Janet. Not all of them, but some of them. That was before she met defendant and during the time that he was courting her. She was then shown a telegram "Cold letter Sunday received, which was in July, 1919," and she admitted that then he was complaining about the coldness of her letters, and requesting her by wire to reply if she loved him and would marry him. The last telegram of July, 1919 was followed by another of January 15, 1920, in which he again asked her if she would marry him, and to wire before noon. That if no reply was received he would wire the doctor. She could not recall why he had stated he would wire the doctor, but that she had not told him then she was dying. She could not remember what he was complaining and her recollection could not be refreshed by showing her the telegram when he wrote "how can you write such a letter." She saved all of defendant's love letters, and had them all until March, when she left the house. She was shown another telegram directed to Mrs. Ella Borgman. The witness stated the name of the lady was not spelled correctly and was the person with whom she lived, and she thought the telegram was one sent after they were married. She did not remember whether she had answered this telegram or others shown to her, but that one she recalled distinctly was received after her marriage and the defendant was exceedingly worried about her and her condition, and wiring for information with reference to the same. At the time there was nothing the matter with her except that she was ill at the time she went in bathing and had a high fever when she went in bathing. When asked if she had ever told anybody that she had married defendant only to get a home, she replied that she had not and the defendant had

come up to Boston to see her at the time of their marriage, and had stayed a couple of weeks while he was on a leave from duty. She did not return with him, stating that she had to get her things together, and had to get clothes. She had tried to get things together during the two weeks Lieutenant Warner was there, but it took her approximately a month to get ready to go away, the two weeks while the defendant was there and two weeks after his departure. At

50 Pensacola they lived at the Northhill Apartments where they had two rooms, kitchenette and bath, where they remained until they got quarters at the Naval Air Station at Pensacola on the Reservation. There they had six rooms, furnished, and a servant. In November, 1920, they bought the first car at Pensacola. They had not been in Pensacola more than two or three weeks when this was purchased. They had a servant at the Naval Air Station all the time until they moved to Washington. When asked who were some of their neighbors at the Air Station she replied, Dr. and Mrs. King. They lived about 100 feet away from them. It was warm in Pensacola and the windows were up and doors open. Mrs. King used to come to see her almost every day, and she would go to see her. Lieutenant Commander Dodd also lived close by them; used to play cards with Mrs. King there, and they lived generally as people live on Army or Naval Posts. She first became pregnant in April, 1921, when they were living in the Northhill Apartments. They did not move to the Naval Air Station until the latter part of May or the first part of June, 1921, as well as she could remember. They had no trouble while they were living together at the Northhill Apartments, and neither did they quarrel. Prior to her becoming in a delicate condition he did not call her names nor she him, and the first time he began to call her any names was when she became delicate. The first time she became pregnant he called her names and threatened her, saying if she did not do what he told her about the baby he would pay men off the street to say they were intimate with her, that this could be done because she was only an ignorant foreigner and didn't know the tricks of this country, although he knew she had been in this country since 1914, and had been a trained nurse, although not a graduate nurse, she had been in training for two or three years.

When asked if she had not learned pretty much about babies during her training she replied "not very much" and she did not know anything about the method and means to take about having no babies, and that she did not know doctors who took those means in Boston either during her training or when she was out nursing. Lieutenant Warner was in Boston Tech. when she first met him, and was a student aviator. He left in February, 1919, for Key West, Florida, for approximately a year. She knew that he was in the Massachusetts Institute of Technology and that after that time he went to Key West and Pensacola. Defendant neither wanted nor liked babies and became extremely angry

51 with her when she became pregnant, she liked babies and wanted a baby after the first time; it was the defendant who compelled her and threatened her to go to Boston for this operation, saying he would hire thugs. She believed in the thought that he would, saying people did that in this country, they might not in Russia, but they did in this country. Asked if she threatened to report him to his superior officer, she replied that she did not because he said he would lose his position in the Navy if she did and he was Aide to Captain Christie, who was in charge of the Naval Air Station at the time. And when asked if she had told anybody on earth before she told her lawyers that her husband had threatened to call in thugs off the street to say they had been intimate with her, she replied that since she had separated she told her friend, Mrs. Shepley, that she had never mentioned it when they lived together, keeping all her troubles to herself, thinking things would be better. When she became pregnant the second time was when the trouble started. The defendant did not want the baby and was angry, accusing her of failing and saying he did not want any children, did not want to be tied down the rest of his life. She wanted the baby and took no means of preventing its coming. She knew Dr. King who was a Naval doctor, also Mrs. King whom she used to see every day. When asked if she ever talked to Mrs. King about babies she replied, No, but Mrs. King said she wanted another baby, she having had but one then. Asked if she had told Mrs. King that American women were immoral and immodest because they become pregnant, she stated she had not and denied saying as one of the Lieutenant's wives was

walking up to he house in a pregnant condition, that she was immoral and immodest and that in Russia a woman would not appear that way, and further denied telling Mrs. King that she knew how to stop having babies, that she would not have one if she could help it, and that if she did have one she would get rid of it. She did not remember Dr. King's coming into her home at the request of the defendant to determine what was the trouble with her at the time of her second pregnancy, and did not recall refusing to allow him to see her, and denied taking cold douches to prevent the child's coming, and denied ever telling anybody that she had. She stated the name of the doctor in Boston who performed the illegal operation was Dr. Gunther, who had his office in Chelsea, but she could not remember the number of the street. It was about an hour's ride from Brookline. The last hospital where she worked was Keller Hospital at Hyde Park. She went to Boston to have the
52 operation because the defendant knew the doctor there. He had wanted her to go to Dr. Reddit at New Orleans and also stated he was going to send her to his friend, Dr. William Barry, at Long Island, N. Y. When she went to Boston for the operation she stayed at her friends, Mrs. Borgman, the lady with whom she lived. Mrs. Borgman did not know why she was there and she did not tell her. She was only a few minutes at the doctor's, but stayed with Mrs. Borgman two weeks. She did not see the doctor the first day she was in Boston, but wrote the defendant and he wrote her. She did not have the letter because he took it away from her the last day she left him, the 13th of March. When he took this letter he had another man with him. It was about ten o'clock at night. She knows that is what the defendant was looking for, as her letters were scattered on the floor and the telegrams that were offered in evidence were on the floor also, as well as the letters offered in evidence. The defendant did not allow her to pick up the telegrams and letters off the floor, he taking same with him, but she told him she would call the police. Finally, however, she admitted that he allowed her to take the telegrams and letters off the floor. She asked him for them in the presence of this other man and was crying at the time. She was afraid but not angry, as the defendant had a temper, although she stated she thought she

was all right, that she did not have a fierce temper or anything and was not angry when she came in. She denied saying anything to the defendant about lice on his body, saying that the defendant called her a dirty foreigner. She said all she said was "you remember you had bugs on you." Being further questioned with reference to her trip to Boston, she stated she could not recall how long she was in Boston before she went to see the doctor, but that he used instruments on her until she left Boston, maybe four or five times. She was taken sick in Pensacola, in the Pensacola Hospital. The defendant took her there in a private ambulance. She went under her own name and Dr. Payne was in attendance. His office was right across the street from St. Carlos Hotel, near the Post Office. That Dr. Payne who attended her at the hospital was the same doctor whom she called in when the defendant beat her so in March and when the doctor put a plaster on her side when she thought she had a broken rib. She further stated she objected to going to Boston, but did not tell Mrs. Borgman, her friend, what

53 the defendant was compelling her to do, although Mrs. Borgman was a friend of hers and knew her mother and all of her people in Russia and knew the plaintiff from the age of fifteen. She did not tell because the defendant told her not to tell anybody.

Thereupon permission of the Court first had and obtained, without objection on the part of the defendant, the plaintiff called out of order a witness **Au Ayou B. Hanna**, who, after having been first duly sworn testified that he lived at Mt. Rainier and was a painter, that he knew both Mr. and Mrs. Warner. He could not recall the date he met them, but did so when he was painting the apartment house in which the Warners lived at 3032 Que Street, somewhere in 1923, during the winter. He met him first and his wife later. At that time Mrs. Warner who was trying to find a colored lady to take care of her baby and the witness said that he and his wife had lost their baby and he was pretty sure that his wife would be glad to take care of the Warner baby, for it was lonesome in the house. Thereupon Mrs. Warner brought the baby to their house and they kept it until the Warners got back from New York in about two days. The next time he saw the defendant was when he

came to the house and asked for his wife. The witness stated she was not there and Warner then told him his wife had left him. He was surprised and asked why, to which the defendant replied that he did not know, that his wife had taken the car, baby, and had gone away, and asked him to try to find out where she was, saying that she might come to see him, the witness, and for him, the witness, to find out where his wife was. The witness said he would. Either that day or the next Mrs. Warner came to the witness' house and told them where she was on Kenyon Street. The defendant then asked the witness to get his wife to return. The witness and his wife went to Mrs. Warner and talked to her and asked her why she left her husband. He said Mrs. Warner told him the reason was that the defendant was not supporting her, gave the baby no clothes, that she, the wife, had no dress or proper clothes for winter weather. Thereupon the witness returned to Warner and asked him for a couple of hundred dollars and he would get his wife back. Defendant asked him why and the witness replied she wanted dresses for herself, to which the defendant replied that he had a coat on which was eleven years old. Thereupon he gave the witness a check for \$150, which Mrs. Warner refused to take. Whereupon he made an arrangement for the two to get together in his house. At that time witness gave plaintiff a check for \$150, and the defendant came with another check for \$50. The de-
54 defendant started to beg her to return and laid on his knees and cried and begged her to come back, saying he would not call her anything and promised to give her an automobile, watch, chain and \$2,000 to go and see or find her people. The witness cashed the \$50 check and the witness and his wife and defendant and plaintiff went together to 11th & G Streets, to Woodward & Lothrop's and plaintiff bought what they needed for the baby and herself. The witness' wife stayed with plaintiff and defendant until 11 or 12 o'clock that night. Shortly after the Warners invited them to dinner. The \$50 check was no good. The witness notified the defendant who immediately gave him cash therefor. The night they had dinner at the defendant's house he acted as though he was sick and the plaintiff thought he was drunk and requested the witness and his wife to stay until two o'clock in the morning, which they

did. The witness did not see any whiskey in the house. At the time they made up in the witness' house witness heard the plaintiff tell the defendant she did not want him to call her any names and he promised to call her no more name. The defendant gave witness a letter to be delivered to his wife in pencil and the witness thereupon identified the letter, which he stated defendant gave his wife with the check for \$50. The letter was identified as plaintiff's exhibit "I. K." On cross examination the witness was shown the check for \$50 which the defendant had given him and read the date on the check April 22nd. Further examining the check he testified it was presented January 23rd. Further examining the check he testified he did not notice that the bank had refused payment because of the erroneous date, that he had not noticed that, having cashed it without question. The defendant immediately made the check good as soon as the witness notified him that it was returned. On the occasion that plaintiff said her husband had been drinking witness did not see him drink. All he saw was a bottle on the bed with something like dark wine, a small bottle that would hold about a pint. Thereupon to further maintain the issues upon her part joined the plaintiff called Mrs. Janeele Hanna who having been first duly sworn testified that she was the wife of the previous witness and knew both plaintiff and defendant, although she could not remember when she met them. She met them when her husband came home one evening with the information that the plaintiff desired some one to take care of her baby, and two or three days later her husband informed plaintiff that she, the witness, would take

55 care of plaintiff's baby. Some time after that, in the winter time, after they came back from New York the defendant came to their home and told her husband he wanted him to go out with him, saying that his wife had left him. Later the plaintiff came to their house and her husband made an engagement with the defendant to return, as witness and her husband were trying their best to get them together. When the defendant came in the plaintiff went into the other room, not wanting to see the defendant. Defendant started to cry, saying he wanted his Russian girl and said he would do everything for her, to which she replied that she wanted him to stop calling

her bad names and that then she would be his wife. He said he would give her money, take her to New York, give her a wrist watch, and give her \$2,000, anything to dress in that she desired, and a machine. At that time the plaintiff was poorly dressed, the witness having a thousand more things than plaintiff's wife. Thereupon the plaintiff was recalled to the stand for further cross-examination. Her attention was directed to her former testimony that on one occasion the defendant wanted her to go to New Orleans and see Dr. Reddit before she went to Boston. Asked if she knew Dr. Reddit she stated that she had met him that fall but did not know him before, although she had heard the defendant speak of him. She did not know Mrs. Reddit though Mrs. Reddit wrote the defendant. She met her first in October, 1921 while they were living on the reservation. She did not know Dr. Reddit until the next fall and did not know that he was an eye doctor. She was not very friendly with Mrs. Reddit and did not write to her. Asked if Mrs. Reddit was not a Belgian, she stated the defendant told her she was and then stated she used to talk French with her and that she did not know her husband was an eye doctor. She had heard her husband speak about Dr. Barry and knew they were born and raised together in the same town and corresponded with each other, but did not know that he was one of the leading physicians in Long Island. When she was pregnant the second time she did not ask Lieutenant Warner to give her money to go to Boston, but then admitted she had and had even wired to the defendant's father to make her husband give her money to go to Boston. Asked why she wanted to go there she stated she wanted to stay with Mrs. Borgman until the baby was born. She stated that it was not true that as soon as she discovered her condition she asked defendant to
56 give her money to go to Boston, saying that he did not want the baby and that is why he struck and kicked her, although when he got to Washington he employed Dr. W. Sinclair Bowen to attend her. And the baby was born in the hospital in Washington where she went two weeks before its birth and remained until the 9th day after it was born.

She did not go out the night she returned home against the protest of her husband and Officer Foley, but went out

because the defendant did not have anything in the house to eat. She told both Mrs. Foley and Mr. Foley that she was so hungry and that there was nothing to eat. Mrs. Foley offered her tea and toast which she refused. Two weeks after she came out from the hospital they had a servant. Asked if she had not told Mrs. King that the reason she had married the defendant was to get a home, she stated that she had not and had never talked with anybody about her private affairs. She further denied telling Mrs. King on another occasion that she would not have any children and that if she did she would take them to Russia because she would not raise them in this Country. At that time her husband was Aide to the Admiral. She denied telling Mrs. King on another occasion when she knew her husband was Aide and in the summer of 1922 when they were hauling down the flag that she wished they would haul down the American flag and run the German flag up in its place, and further denied on another occasion when four Marines were lost in a balloon that went off in the Gulf and were never found, that she did not care what happened to Americans, and denied that Mrs. King requested her to leave her home and not call again while she entertained those sentiments, saying that Mrs. King and herself were friendly at all times. She further denied that she earned for herself the reputation among the ladies at the Post of being a Bolshevik. She further stated that while she was living on the Post that her husband called her names, but that she never called him any names. Thereupon she was shown a piece of paper and asked to look it over carefully and to examine the signatures. She denied that the writing on the paper was in her hand and further denied her signature, saying it was not her writing at all. Asked if any of it was in her handwriting, she stated the signature was not hers. She was further asked to select among the words those in her handwriting and those not in her handwriting. She stated the word "Lord" was not hers, and then said it was not her letter at all. Asked if any of it was in her handwriting, she indicated some as in

57 her handwriting. The word "Lord" was not hers, however, neither was the word "Janet" and the word "so." Neither was the signature. Asked if the rest was in her writing, she answered "It looks like my writing, but now

I see it is not my signature.” The words “will promise” were not hers, but then she stated the words “I will” were hers, but “promise” was not. While counsel was standing beside her with the letters she had offered in evidence in the morning, she was asked to identify the third word in the third line on the paper she had held in her hand, and was further asked why she was looking at the paper counsel had in his hand, to which she replied because the paper she had in her hand did not look like her writing, but the one counsel had in his hand was in her writing. Asked further about the writing she had in her hand, she replied “There are a few words that are not mine.” She was then asked to point out the words starting at the beginning that were hers in the letter, and she stated “Thursday, March 17, 1921” were not her handwriting. “I” was. “Promise” was not. “Not” was her handwriting, as well as the word “two.” “My hubby” was her writing, as well as “name.” “That” and “I called him” were her writing. Again she was asked why she kept looking from the paper she held in her hand to the paper counsel held in his, to which she replied “because it don’t look like my writing.” Again “this writing looks different from that writing” indicating the paper counsel held in his hand. Again she was asked if “this afternoon” was her writing, and she replied it was not. Asked to examine the words “so help me” she stated “so” was not her handwriting, “me” was, she thought “help” was, but could not say for sure. Of the phrase “if I die” “if” was in her handwriting, but “I die” was not. “This minute” was in her handwriting. “His loving wife” was in her handwriting, but “Janet” was not. She had no independent recollection of having promised her husband on March 17, 1921 not to call him names, stating that the date on the top was in the defendant’s handwriting. However, she admitted she wrote “I will not,” “names that I called him so help me,” and “his loving wife.” She further said that Mr. Warner and she were on very friendly terms at that time, March 17th. In March, 1922 her husband beat her very badly and almost broke one of her ribs, and then she went to see Mr. Hoffman and called in Dr. Payne who examined her very thoroughly and strapped her up. Asked

58 what time of the day her husband beat her, she could not remember, whether it was night or day, daylight or dark, whether they had been to bed or not. She did not remember how long the row lasted. She was trying to think what started the trouble and it seemed Mr. Warner struck her before the baby came, that winter or fall. He beat her more than twice. She did not quite remember the reason why she went to see Mr. Hoffman was because he beat her, and she did not call Dr. Payne and tell him she was in a delicate condition at the time he put the plaster on her side. She thought that was the fall. On whatever occasion it was that her husband beat her she went to see Mr. Hoffman. She did not believe she called Dr. Payne in on that occasion. She showed him her bruises when she was in a delicate condition and now that her attention was called to it she believes it was in the fall. She thought she had a broken rib and it hurt her so when she breathed she showed Dr. Payne the bruises. She believed now it must have been in the fall of 1921 and she had gone to Boston in the spring of 1921. Her husband did not beat her in the spring of 1921, but in the spring of 1922 and did not beat her on account of her delicate condition. She thought now she remembered telling the defendant she thought she was in a delicate condition in the fall of 1921, but she was not. It was because she told him she thought she was in a delicate condition that he beat her, because he did not want any children. Asked if she could not remember whether it was during the daytime, nighttime, whether they were in bed, had gone to bed, or were going to bed, or to give some indication of the time this occurred, she stated she could not remember, it was done long ago, although she was bruised and it hurt her, and it was hard for her to breathe. However, she did not scream or call for help or on any of the neighbors because she was too ashamed for people to know her husband would beat her like that. In 1922 when she went to see Mr. Hoffman her face was bruised. The trouble then started because she was going to have a baby. At that time Dr. King had a little boy whom her husband did not like and always made fun of him, saying he looked as though he came from the east side of New York. The defendant did not like him at all and did not want any children of his own. She could

not remember at what time in March, 1922 her husband beat her, and could not tell whether it was in the daytime or night, as she was very ill at that time in her delicate condition, and the defendant would not give her any money to buy things she ought to have telling her not to go to the Commissary any more, that he was going to
59 tell the sellers not to serve her at all.

When asked if she had any company calling on her at that time or whether she had any whist parties, she said she just had one. She dropped out because she was in a delicate condition, but stated she was not visibly so in March, 1922, but was so sick to her stomach she could not play bridge but admitted she was not so sick that she could not drive an automobile from Pensacola to Washington the next month. Asked if there was anybody down there at the time Lieutenant Warner was abusing her and they were having these fusses, with whom she talked about the matter about the Post, she replied she had not but she had gone to Mrs. Marino's boarding house and had met Mrs. Marino through the wife of Lieutenant Noble. The house was located on Gonzales Street or Cervantes Street, about five blocks from the Post Office and two or three blocks from the St. Carlos Hotel. When they first came to Washington they lived at 915 19th Street after they had spent a couple of weeks at the Raleigh Hotel and on 19th Street the defendant called her names, but she never called him any and during their married life upon one occasion only when he called her a name she replied you are that yourself. He cursed her. She knew the defendant's father and mother, but never called them any names. She did not know in what office the defendant's father worked, but said her husband told her he was in the Attorney General's office for the State of New York. Again asked if she was not friendly with Mrs. Reddit and if she hadn't visited her on one occasion, she stated her husband took her there on one occasion over Labor Day. She denied she ever called defendant's people "dirty Irish farmers" or wrote it. The witness was then shown a piece of paper and asked if the writing thereon was hers, to which she replied it was. Asked if the writing on the paper did not refresh her recol-

lection as to whether she had called his people names and wrote them down, she stated that she had not, that the defendant had misrepresented his family to her before their marriage. Asked why she wrote what was on the paper, she replied she did not know. Asked if she had not told the Court that the defendant had driven her from his home, she stated she had, and then asked if she was not planning to leave him as far back as the middle of December, 1923, to which she replied "Yes, I believe I was." And further stated that the Christmas before she left she bought a trunk without her husband's knowledge, and kept her things and the defendant's letters in the trunk — lock and key.

60 The very night she left she moved the trunk out because the trunk was opened. She did not intend to move it and never thought she would have to move it that night. But she bought the trunk intending to leave him and have it to take with her when she did leave. Thereupon she was asked if the sentiments expressed on the piece of paper in her handwriting were her sentiments about divorce, to which she replied they were. Thereupon the paper was received in evidence as defendant's exhibit #1. Asked what she meant by the words "son of Irish farmers" she replied defendant had told her that. Asked if she knew that his father was an Assistant Attorney General of the State of New York, she stated she did not. Asked when she wrote "divorce January 1924, these married folks have started the New Year right" which was underscored five times, "everybody follow" "hurrah" "ha, ha, ha" what she was thinking about and whether she was thinking about preserving the home, she replied that she was and wanted a home in Washington. Asked if she did not call the defendant vile names that he would write down on paper when she called them, she said she did not know vile names and had not called him such, and that she had not again and again seen him writing on paper the names that she was calling him. And when asked if she on one occasion when she saw him writing the names which she was calling him had said "I can do the same thing" and wrote down certain names, she replied "I will write that you called me just as you do and I will show this to the District Attorney" to which she replied "I am going to

write" and she believed she then wrote while she was sitting at the table, although she was not calling him names. She denied saying that she told him to "go ahead and show them to the District Attorney because nobody will believe you and I can write just as well as you can" and further denied saying "My word will go farther than yours in court anyway because I am a woman and a foreigner," but told him her word was just as good as his. She was then shown a piece of paper and asked if the writing thereon was hers, to which she replied it was. She was then shown the words she had written on the paper earlier in her direct testimony, and her attention was called to the words "fuck you" which she had just admitted writing and the words she had written on the paper earlier in her direct testimony, and was asked to explain why she had used the words in the way she had on the paper given earlier in her

61 testimony and yet had no difficulty writing the word on the paper which was later offered and received in evidence as defendant's exhibit #2. She made no explanation. The witness was then shown the paper writing and asked if the same was in her husband's handwriting and she stated that it was, but did not remember any language being used her household on February 29, 1924 similar to that written on the paper, and did not remember that while her husband was writing that paper she then wrote exhibit #2, stating she would do the same and denied having seen him write the paper, saying he did all his writing at the office and never wrote at home, having no desk, just a table. Her attention was then directed to the incident of September, 1923, when she was living at 1915 19th Street. On that occasion she did not ask him to get tickets for a football game, but said he was going to take her to Annapolis to see the football game that day and she waited for him until twelve o'clock. She did not know whether Lieutenant McGuiness went with him or not, but he did not get back until nine o'clock. She was not angry when he returned, but was disappointed and was waiting for him in the apartment and was not out when he arrived but saw him when he came in. She did not start calling him names, and the attention of the people across the areaway from her kitchen window was not attracted

by her calling him names in a loud, angry voice, but by her screaming for help when he struck her. She remembered his going to the kitchen window and closing it and when asked if she had not said in her direct testimony that she had closed the window, she replied "I am trying to remember—the front windows" and then said her husband closed them too. She said "If you strike me again I will scream for help." When she ran to the window he passed and put the window down. She did not try to get out of the door of the apartment when he was putting down the window. He was right at the door after he was at the window. She did not go out to dinner with him after he beat her and did not go out driving within half an hour and she was not so excited that he had to drive her about Washington and take her to get a cup of coffee or something to eat and then bring her back home about twelve o'clock. He left that night about twelve or twelve thirty saying he would not live in an apartment where everybody knew he was a wife beater. He left shortly after the janitor went out of the apartment, about nine o'clock. It was not as late as midnight that he left. At two o'clock he telephoned her from the Fairmont Inn. She saw him there three or four times maybe. He did not see her practically every day and she did not plead with him to come back. And she did not say she would go with him and live anywhere outside of 1919 16th Street.

The reason they moved to 3032 Que Street was "Because he would not live with me," and he promised not to strike her any more. She did not attack him, she was afraid of him. She was not angry during any part of the argument. The reason he beat her that night was because he left only fifty cents and she asked him where he had been, to which he replied "to the football game." The row started when she told him he had gone to the football game and left her only fifty cents. He said if I did not like it I could get out. There were eight women to every man in Washington and that he did not have to live with a dirty foreigner and he kicked her with his feet. She started to cry and he said "Stop, stop crying, everybody will know." He pulled her by the hair. Asked if the trouble had not arisen when her husband came in about nine o'clock, that she was out and came back about fifteen or twenty minutes

later and immediately flew into a rage because he had been to Annapolis and had stayed away until nine o'clock and continued to nag him and called him such names until he had to close the windows, she replied "Oh: No." She denied she started toward him when he started for the door, and further denied that he had to hold her by the wrist so that she could not attack him, and she hollered that he was trying to attack her. That was not the way it happened at all. He struck her and grabbed her, but nothing as described happened. She was not in a rage. He never drove her around the city and left her. She denied that he left her after he had taken her to a restaurant and brought her home, saying "I won't go in the apartment and be disgraced further." Nothing like that occurred. Asked if he did not send her money from the Fairmont Inn, she said that on the next day she called him up and he sent her \$2 by a taxi driver. Her attention was then directed to her testimony to the effect that just before she filed her bill she did not have sufficient food and that there was no milk for the baby and she stated they had no milk for the baby and no money. The defendant, however, paid the rent on the apartment which she thought was \$70. She had the Commissary to go to, but the defendant forbade her to go there any more. She admitted, however, she went to the Commissary during December and January, but could not remember about February. She did not have enough to eat during those months, however. The defendant paid the Commissary bill.

63 Asked if the defendant had not given her spending money during that February and March, she stated that in January he gave her a check, but he took the money away out of her purse. Asked if she had more than one check, she said Yes. Asked if she had any check in February, she said he refused to pay the servant and she paid her out of the money he gave her. She was then shown several Commissary bills and asked if they were bills for the months they had just been talking about, to which she replied they were. For instance, there was a bill for a bag and a trunk she bought on December 11th marked "Paid." In that month there was a bill for \$52.54, just for trunk and tires. She did not buy the tires, although she ran the automobile. He paid for the tires. She, however, bought

the trunk and bag. In February the Commissary bill for groceries was \$74.36. She did not know that she was getting the goods at a reduced price, although she had been married to a Naval officer for four years. She knew only that "You buy the gas cheaper but not always the meats and the vegetables." The \$74.36 for food during February did not include the tires, just groceries, meat, fruit and vegetables. The bills also included \$7 for gas and \$8 for equipment. The bill for January marked groceries, meats, fruits, vegetables and more gas was \$45.12. She believed groceries or vegetables also included defendant's cigarettes. During the month of December when she said she did not have enough to eat the bills showed \$65.36 worth of food supplies purchased excepting \$7.35 of gas for the month of December. Her attention was then directed to slips dated in March, 1924, one particularly March 11, 1924. She had first said she did not believe that had meant anything at all, and when asked if it did not mean that on that date there were delivered to her home the food supplies mentioned thereon, she stated that she remembered Mr. Warner brought those home and the slip was marked "Paid." On March 12, 1924 the slip also showed that he had brought home a three-pound roasting chicken. Asked if it was not a fact that she always had enough to eat, she said No, and that the defendant nagged her about going to the Commissary to get what she wanted. But she went to the Commissary three weeks after she left while she was staying with Mrs. Shepley, and no guard tried to stop her going to the Commissary, although the defendant told her he would embarrass her before the guard if she went. Asked if there was anybody that

64 stopped her from going to the Commissary and giving her whatever she wanted on her husband's bill when she said she was in destitute circumstances, she replied she was not.

65 The witness was shown a number of commissary slips and she stated that her signature did not appear thereon and that therefore she did not believe she got them for they always have to sign the commissary slips. She was then shown a slip dated March 7th and testified her signature was on there and the slip showed that \$3.02 had been spent for subsistence at 4032 Q Street. Her

signature also appeared on the slip dated March 14th for nine gallons of gas, and therefore if she got that she must have gotten that. Likewise her signature appeared on one for March 19th for eight gallons of gas, \$1.20. Also one for March 22nd ten gallons of Gas, \$1.50. March 28th her signature appeared upon a slip for the meat market in the sum of \$2.40, for subsistence \$3.45. Her signature also appeared upon one in the sum of \$13.31, and she would not have signed it if she had not gotten it. Another one dated the 28th of March, 4 saltines, 1 auto razor, 6 bath towels, \$4.52, also bore her signature. In another dated March 28th, subsistence \$1.76, eight gallons gas \$1.20, fruits and vegetables, \$.90. Another the 4th of April, ten gallons gas, \$1.50, 5th day of April, \$.94, meat market \$3.57, both of which bore her signature. She was then asked if she did not leave Lieut. Warner on the 12th day of March and she replied the 13th. She had not testified that she did not have the use of the commissary and was it not a fact that she had the use thereof and made slips thereon for three weeks after she left him? She replied that she had and bought gas and food and was using the commissary.

Q. And it is not true as you say then that you were living on the charity of your friends after you left Lt. Warner on the morning of the 13th of March? A. I do not remember when I left him. I had twenty-three cents in my pocket. The next day I went to the Navy Department and I told Mr. Warner I needed money. That is the day she got the check. She had food and the commissary was open
66 to her and she made use of it and after she separated she said she found that Lt. Warner could not stop her from drawing from the commissary, and when asked whether she did not know she could use the Commissary after having lived four years with a Naval officer, she replied that he told her he could tell the guard not to let her in the Commissary; that he was a Naval officer and the guard would have to listen to him.

Q. Did you ever go to the Commissary when they would not let you in during your married life? A. No.

Q. You did not? A. No.

Thereupon fourteen slips, which have been shown to the witness, were received in evidence, marked "Defendant's Exhibit Cross Examination No. 4," cash slip being marked

with a serial letter. If she had not testified that she did not have any money and he did not give her any, she stated that the day she left she did not have any money. Asked if he had not been giving her money before she left, she replied that when she came back in January he gave her a check, and that then he would take the money out of her purse. When asked if she did not have money when she went to Boston, she replied that he gave her \$110.00, but was not sure as to the amount. She wanted to go to Boston to see the doctor, her family physician who wanted her to go away for a rest where she would have a big time. She was gone she thought about two days, Lt. Warner giving her the check to go. That was in 1924, January 2nd. She thereupon identified the check given her and the indorsement on the back of it dated January 2nd, 1924, in the sum of \$110.00. When she came back the \$30.00 change out of the check was taken from her by Lt. Warner. Then on January 29th she received a check for \$90.00. Thereupon

67 the two checks identified as "Defendant's Exhibits No. 5 and No. 5-A" respectively, were offered in evidence. Thereupon three checks, dated February 1st, 15th and 29th respectfully, were shown witness and she was asked if she received them and she replied that she had. The first for \$18.15 she stated was for repairs to the automobile, that she had called Lt. Warner up and he had given her the check for it. The check for the 15th was in the sum of \$16.00 and on the 29th was for \$50.00. Thereupon they were offered in evidence marked "Defendant's Exhibit 8 and 9" respectively. Then she was shown a check dated March 13th and asked if she had received and indorsed it and had got the money thereon to which she replied that she had and the check was offered in evidence as "Defendant's Exhibit No. 10." She was then asked if in addition to these checks from January 2nd she had not received a check for \$50.00 from Lt. Warner from Mr. Hanna and she replied that she had. She was then asked how much spending money she got during January, February and March and she replied that she had to pay the servant, and Mr. Warner would take money from her purse; that she paid the servant but that Lt. Warner would give her a check. She was quite sure of that. She was asked if she paid the servant out of the \$50.00 check that

Mr. Hanna gave her, and she replied that she could not remember. And she could not remember whether she paid the servant out of the \$110.00 check, or the \$90.00 check. She was then asked if she usually paid the servant in the house and she replied that in January was the only time she had a servant. She was then asked if she did not have one by the name of Ontronette Jackson in January, to which she replied that she did, and in February she had Nettie Hawkins, whom she had with her when she left the house. It was the same Ontronette Hawkins, who was the witness. She was then shown a check dated February 22nd, in the amount of \$9.00, in 1914, and asked if that was a check for Nettie's pay and if she was then working for her to which she replied that it was and that at that time Nettie
68 was working for her. She was then shown a check dated February 4th, which was also pay and the witness' name appeared thereon. She was then shown a check and asked if that was a check to the order of B. F. Saul, the rental agent for the apartment and whether it was the rent check, to which she replied that it was. She was then asked if Lt. Warner did not pay the household bills, and replied that she paid for the servant and paid for the washing, and she was then shown another servant check and asked if her name appeared anywhere on that and she replied that it did not. When shown the check for the electric bill for February, she identified it and stated it was a check for the electric bill for February dated February 21, 1924, and was then shown a check from Lt. Warner to the Arcade Laundry for laundry, dated February 11th, in the sum of \$1.38; if she could recall at any time of having paid the Hawkins bill, and she replied that she could not but she knew she paid her. Thereupon the checks dated February 4th, 5th and 26th to Ontronette Hawkins were pinned together and offered as "Defendant's Exhibit No. 11," and received in evidence. She was then asked if during January, February and up to the 13th of March she had not received from Lt. Warner for spending money \$416.00. She replied that she had not received this for spending money; that when she returned in January that she had no coat. She stated that she had just a short coat; that she bought a short fur coat in October. She further stated that she had no *underware* and could not get the money therefor

and that when she returned to Warner in January she had none and that when she left him she did not have any. She said she left of the 13th because Warner told her to get out saying "You get out and take the brat with you," saying "I don't want anything that came out of you." This was said a few minutes after midnight the night before. She had been waiting for him to come home from where he had been. She asked him to tell where he had been and he said it was none of her business. She did not remember, however, whether or not he came home to dinner that night when asked if he had come. She then stated that she did remember that they had dinner together but had nobody for company. When asked if she did not know Mr. Hollingstead, she said that she did; when asked if he was not there for dinner, she stated that it was on a Tuesday night that he was there, and she left Thursday afternoon. The trouble started the night before she left because Lt. Warner started calling her names, saying that he did not want her; that there were eight women to every man, and he did not have to stick to her and called her a "dirty foreigner," saying he was tired of supporting her. When asked if on the day that she left him, he had not come up home with food from the Commissary for dinner, she replied that he did not. She left him on Thursday; when asked if he came on Wednesday from the Commissary with food, she replied "yes, that was so" that she was certain they had dinner together that night. The following day after she left him, she went to his office and drove him in the automobile to the bank where he drew a check for \$100.00, which he gave her. She did not know at that time that he was in debt and when asked if he hadn't told her how his debts were accumulating, she replied that he told her he never had any money but that she did not always believe him; that in January before she left he told her that \$5.00 a week was a sufficient allowance, and in fact too much. When asked that if in that time she did not get \$410.00 in three months, she said she did not count it. She was sure however that the day she went to the bank was the 14th because she left on the 13th and went to the bank the next day. When asked if she did not see a lawyer before she went to see Lt. Warner to get this check, she stated she did not remember and could not recall whether

she asked her lawyer to write a letter to Lt. Warner, and could not recall whether she went to see here lawyer
70 before she separated from him or not. She was then asked who her attorneys were and shown a letter and asked if the name appearing on the letter was not one of her attorneys at the time, to which she replied yes. Then when shown the date of the letter, March 13th, and asked if that did not refresh her recollection, she replied that that must have been the day she left, the 13th and not the 14th. The letter was from Newmyer & King. She was then asked if she did not take the check for \$100.00 to her lawyer to pay the fees and she stated she did not. Lt. Warner had told her to go and get money through the lawyer, she said. She denied saying on her direct testimony that she was left penniless and without food in large after she left Lt. Warner, and that she had not paid the lawyer anything. When asked that if in addition to the one hundred dollar check she had not also received \$40.00 worth of subsistence from the Commissary for two weeks and five days after she left, she stated she did not know how much it was, but she had to go to the Commissary every day and get gas for the automobile that she was running. She was not hungry because she stayed with her friends. When asked if she said she got chickens for the baby —. The Commissary slips were then shown her and it was indicated on the slips that she had bought gas on the 14th, 19th and 22nd, net \$2.40, subsistence \$13.31. When asked if the meat and subsistence was all for the baby, she stated that most all the things she got from the Commissary were for the baby and the bath towels because she had no towels on the bed for the baby. Further shown the Commissary slips, they indicated that on the 28th she had \$1.76 subsistence, as well as fruit and vegetables, \$.90, gas on the 4th, subsistence on the 5th and \$3.57 on the fifth, but she denied having plenty of money. She was then asked why she said she did not have enough money to file the Bill of Complaint in this case that she filed, and she stated that she thought she filed the suit on the 8th of April
71 and was out of money—had to pay her servant that she had with her.

Q. Just a minute. You stated that you were on the charity of your friends, and yet you had a servant and an

automobile, the Commissary and \$100.00 on the 13th of March, to which the witness replied it was mostly gas. When asked if she did not have Nettie Hawkins, she said that she had to have her; that she admitted having the automobile, and said that she went to the Commissary only for the baby. She had to buy chickens for her. She was then asked where she went after she left Lt. Warner and said she went to Mrs. Baet's, where she stayed from Thursday to Saturday and then went to Mrs. Shepley. She saw Mrs. McNairan in the afternoon, but did not stay there. She was asked how much she paid for room rent at Mrs. Shepherd's, and stated she believed she paid something like \$60.00 a month. She was then asked if in addition to what she had stated that she had when she left Lt. Warner, if it was not a fact that she came back to the apartment to get whatever furniture she wanted. She replied that she had not; that she had been to the apartment several times. She took very few things, however, because she did not have much furniture. She was asked if she had not taken whatever she wanted, and she replied she had not; that she wanted the baby carriage, but did not take it, because she could not take anything with her. She was then asked why she did not take the baby carriage when she took the baby's chair, and she answered she decided to come after it the next day and that when she went there it was locked. She could not tell, however, how many times she had gone back to the apartment. She was asked if she had not taken out a big dining room table and she said that was the only table they had, when asked if she took it, she replied that she had; also the baby's chair and kiddy car and the crib. The baby

carriage was there when she took the chair and crib
72 and Lt. Warner was not there when she took them.

Whether Lt. Warner was there when she took out the baby's crib and chair and table, but she could not recall. Neither could she remember whether she took anything to Nettie Hawkins' house, but recalled bringing the table to Mrs. Shepherd's. She did not remember taking the refrigerator. She had one but had bought it second hand on Ninth Street, in as much as the refrigerator at 3032 Q Street was delapidated so that she could not use it. She was asked then if she did not take the linen when she left and she replied that she had very little linen.

Q. Did you take any linen with you when you left? A. I came after it.

Q. You did take it? A. When I left?

Q. Yes. A. The day I left?

Q. *The* day or the next day. A. Yes, certainly, I took it.

She was then asked if she did not take blankets the day she left or the next day and she replied that she could not remember when she took them, but she didn't take blankets.

Q. Did you take any silver when you left? A. No, the silver was left, as well as I remember.

Q. Did not you take any at all? A. When I left I did not have any time—I did not take anything like that—well, I guess what you mean is the little silver pitcher and sugar bowl. I took that.

Q. You took that? A. That was a wedding gift.

She was then asked if she did not take a small mahogany antique table and replied they never had a small one, but then she was asked if she did not take a large one
73 and she replied yes, that she still had that, as well as the sewing machine, two mahogany chairs, a wicker Windsor chair, a floor lamp, the only rug that they had. She had to have a wagon or truck to carry off what she took. She was then asked if she did not take some of the things over to Nettie Hawkins' house, but she could not remember taking any. But during this time the baby carriage was still there, while she was moving these other things. She was asked if she had asked Lt. Warner for the baby carriage, either the next day or the day she moved out and she replied that she had not, but that when she went after it, she could not get in the apartment. She could not remember when it was but she remembered that the apartment was locked. She was then asked that inasmuch as she had stated in her Bill that Lt. Warner was habitually drunk, whether he was drunk a great many times to which she replied yes. At one time she remembered that he brought liquors to the house in ginger ale bottles. She could not remember how long ago it was, but he had liquor. She was then asked what it was the night Mr. Hanna was there that Hanna told about, and she replied she did not know, but whatever it was it made him sick. She had not

smelled it. They were all together at dinner. She did not know whether Mr. Hanna was trying to take a drink, but she saw Lt. Warner take something out of a bottle and drink it, but she did not see how much he took, or the bottle after that. He was pouring the contents into a glass. She did not know how big the bottle was, but she did not think it would hold a quart, and did not know what he did with the bottle after he got through with it. He was drunk and sick to his stomach. She wanted to see what it was that made him so deadly sick but she didn't know. She was asked if she knew what the smell of whiskey was and replied that she did but she could not say it was whiskey—it was alcoholic liquor. It was red in color and had a sediment in the bottom of the bottle. She was then
74 asked if it were arick, and replied she did not know what that was. She did not remember being at Mr. Hanna's house when he would give some of the Arabian liquor to his friends.

Q. Did you not have any Arabian drink at Mr. Hanna's house? A. Yes—well, I don't remember. But I do not know what Arabian liquor is.

She was then asked if on the night she had trouble with Lt. Warner at 1919 19th Street, he had been drinking? She replied, he had been drinking that day because she smelled liquor on his breath, but she did not say he struck her because he was drunk. He was not drunk that night, but had been drinking because she could smell liquor on his breath. She could not count how many times a week he got drunk, but it was quite often. When asked to answer how many times a week he would get drunk, she stated that she could tell it was "quite often." At 3032 Q Street he used to come home drunk, and at Ingleside Terrace, at Foley's house. One night he came home and was drunk and everybody knew it. He forgot where he parked his car and asked her to look for the car. She remembered that. On another occasion at 19th Street, before the baby was born, he was drunk and she nursed him all that night. His eyes and face were swollen. He was drunk more than once on 19th Street, but she could not remember how many times.

Q. Have you not stated in your answer here, Mrs. Warner, that he was habitually drunk? Did you not state that? A. Yes.

Q. What did *not* mean by that? A. I meant that he liked to get drunk and drink liquor. The night before I married Mr. Warner, I asked Mr. Warner if he were a drinking man and he said "I never touched a drop of liquor in my life," so he said "I have never touched a drop of liquor in my life, so help me," and I believed him.

75 Q. Did you sign and swear to these papers in which you say that "the defendant is addicted to and habitually uses intoxicating liquors and at all the times aforesaid the plaintiff was living with the defendant the defendant would come to his home at late hours of the night?" A. Yes.

Q. And in the morning in a drunken condition and he was sick frequently from drink? A. Yes, he was.

Q. And you swore to that? A. Yes.

Q. And that is true? A. Yes.

Q. And that happened all the time throughout your married life, not merely in Pensacola, but here in Washington? A. Yes. I do not say it happened every day.

Q. You said in response to Mr. David that he was drunk once a week. A. Yes, something like that.

She was then asked that if in January, 1924, Lt. Warner had come to Mr. Hanna's house and there the two made up after their separation. And whether on that occasion she had not told Mr. Hanna that she would go back for \$200.00. She replied that she did not tell him that. She did not know that Mr. Hanna had told Lt. Warner that. It was in cold winter and she did not have any underwear. The baby had on a thin organdy dress. When asked if she came back for \$150.00, she replied that she did not come back for money at all. When asked if she did not want \$2,000.00, which Lt. Warner had saved up, she said that she did not, but that he said he would give it to her and that he would turn his pay checks over to her. She did not want them,

but only wanted a little allowance. When asked if
76 in Pensacola when she came back, if she did not get a new hat and a new dress, she replied that she had; that Lt. Warner was ashamed of what she had on, the hat having been bought before she was married. She did not tell her lawyer, Mr. Hoffman, that she would go back if she got a new dress and a new hat.

Q. And did you leave his office and go out and get a new dress and a new hat? A. No.

Q. And in January, when you came back to Mr. Hanna's house, did not you demand the \$2,000.00? A. No.

Q. And he said he would turn over his pay check? A. He said he would turn it over.

Q. Did you also ask him for a platinum watch? A. He said he would give it to me.

Q. You knew he would promise you anything, didn't you? You had learned that during your married life with him. A. Well, I did not ask him for the wrist watch.

She was then asked if she did not know from the letters he had sent her before they were married that she could get him to do anything for her and that he would do anything at all that she wanted him to do? And she asked what was meant by that, stating that she could not get anything she wanted after she was married. That she had trouble getting a one hundred dollar check the day after she left him and went to the Navy Department and rode with him to the bank; that he was calling her names in the car. Thereupon, upon re-direct examination, she stated that she had never said anything disrespectful to the United States flag while she was in Florida and had never said anything about it. That Russia was one of the Allies, that people fought for the Russians and she lost a brother in the

77 Revolution in the war on the side of the Allies. She was then asked if on any occasion she had ever shown any disloyalty to the United States, and she replied that she had not; that during the war, she made up sweaters for the American soldiers, and socks. She was knitting all the time. She knitted socks for the Belgian orphans. She further stated she had never shown any sympathy for Germany as against the Allies. When asked if Lt. Warner had ever made any effort to locate her mother and father, she stated they both went to the State Department and made efforts to locate them, and that he promised he would send over money to try to locate her people and would pay \$2,000.00 and put it in her name that she might use it to go and find her people. He did not do this. That is the \$2,000.00 that he had reference to in the letters that were written by him. Lt. Warner paid Ontronette Hawkins very

few times—she always paid her, and the last time he told her she was paying her too much. She usually paid her because she was afraid she would leave. She was then asked concerning the \$416.00 which Lt. Warner had given her in January, February and March, and stated that the \$110.00 check was the first check he had ever given her and that she went to see her friends and that he knew that she was using it to go to Boston. The \$18.15 was repairs to the auto and he knew that she spent it that way. She did not recall what the \$16.00 check was for. The \$50.00 on the 29th day of February which she received, she was then asked what she did with it and she stated that she remembered on one occasion she bought kitchen utensils—that all they had was two pots, burnt to the bottom. The \$100.00 check she received on the 14th day of March, the day after she had left her husband. She did not pay to Newmyer & King any money and did not pay any lawyer anything before she filed her suit and had no money to pay the court costs, at the time she filed the suit. She was then living at Mrs. Shepherd's, 2827 22nd Street with her little daughter. She had been there over a month and
78 paid about \$60.00 for room and board. She further testified that after she left on March 13th, she went to Mrs. Batts; that she had the articles of furniture she had taken still with her. It was just before she filed the bill that she ceased to get any provisions from the Commissary. She further testified that she got articles from the Commissary up to April 5th. She stopped on April 5th because she filed her suit on April 8th. Mr. Warner did not say anything to her about stopping.

Q. You had continued to get your supplies from the Commissary after you had filed the suit? A. No, I do not think so. Anyway I did not think it was right because the court allowed me so much money.

Thereupon to further maintain the issues upon her part joined, the plaintiff produced **Bunn Kelley**, who being faithfully sworn deposed and said that he had been employed at 1919 19th Street in the capacity of janitor in the year 1923, having gone to work there about January 26, 1922. He stayed there a little over a year. He knew the War-

ners and they occupied Apartment 41. They had a child. The janitor and his family lived down underneath in the southeast corner of the building. The Warner's kitchen came right down the area way by his apartment. His work kept him at the apartment all the time. In 1923 his attention was attracted to the Warner apartment. There was screaming in there one evening about six o'clock and the lady's voice that was crying for help attracted his attention. He got on the elevator and he and the elevator man went to the fourth floor. It seemed as if the screaming was near the middle way of the building and just as he got off the elevator, Mrs. Warner attempted to open the door and it closed quickly and Mr. Warner wanted to pull Mrs. Warner away. "Mrs. Warner said, 'Yes, I had to call Kelley in, you have no business beating me.' Mr. Warner said 'It is nothing of the kind, I am not beating her
79 Kelley, I am not beating her'; and he said, 'why do you call a nigger' and I said 'there is no resident manager here and I am supposed to look and come to the rescue of any tenant in the house, who calls for help,' and he said 'It won't happen again'. Mrs. Warner said 'Go and get a policeman' and I said 'I will do it right away'. Mr. Warner said 'Don't do such a thing, don't do it. It won't be done any more,' and I said 'I have a policeman', and he said 'Don't let anybody know about it, it won't happen again.' This was about the last of December, sometime in December, 1923." He had seen Lt. Warner that afternoon or evening when he came down to the boiler room as he first came in and asked Bunn how the heat was. He did not see him any more after that until he went up. Warner had been drinking, as Bunn smelled it on him. The elevator boy's name was Lewis Taylor, who is now dead. About two weeks after that occasion, Bunn again went to the Warner apartment. Mrs. Warner was calling for help and calling for him out of the window and some other tenants were crying to come up to the fourth floor. Bunn went up again and Warner met him at the door. Bunn got his foot in and was a little stronger than Warner and went in. Mrs. Warner had her hair down and was crying and had a bruise place on her arm. Bunn told Warner the officer was down stairs. Warner said "You are not going to have me arrested? I have already ordered tickets for the ball game and I was going to take you to the game. I

won't do it any more." Bunn said "You said you would not do it any more before. The officer is down stairs now. I don't know what to do about it." There wasn't any officer there but he told him that to get him to stop. Bunn reported the occurrence to the office, because the other tenants were there. The office was that of Thomas J. Fisher. Warner as drunk that night. "He had been drinking pretty heavy". Mrs. Warner's waist was torn. "Right down there through the chest." On cross exami-

nation, the witness testified that it was sometime near
80 the last of September, 1923, that his attention was attracted to the Warner apartment, and about two weeks subsequently to the Warner apartment on the second occasion.

Q. Was it two weeks later, in October sometime? A. Yes.

On the first occasion he was certain that it was Mrs. Warner's voice that was screaming. He could not tell the day of the week or the date upon which he was called on either occasions, but it was getting cool weather, along in the fall. The first occasion happened about six o'clock and the second one about nine o'clock. The Warners had been living in the aptrement since March. They were one of the first tenants to move in the building. He could not recall who lived in Apartment 42, but people by the name of Rothrocks and Chevolet lived in 43 and 44. They are not living in the apartment house now. The Warners moved out of the apartment a little more than two weeks after the second occasion on which Bunn had been called to the apartment. He had moved the Warners out. After the second occasion, when he went up stairs, he saw Lt. Warner coming in and out of the apartment house just as any other tenant. He was not attracted any more by screams after that. On the second occasion there was no doubt in Bunn's mind that Lt. Warner had been drinking. He could smell it on his breath. He did not notice him stagger. He was a little bit ugly to Bunn. He tried to keep him out of the door. Warner told him not to come in and told him to get out. He could not say who it was who tried to attract his attention on the second occasion, but they said it was on the fourth floor. It was at the kitchen window of the apartment. He heard Mrs. Warner's voice calling for help and others too. He could not state how many. He could not state whether the

voices were coming from the floor above or below the Warner apartment. When asked if anybody was in the hall when he got there, he stated the people in 43 closed
81 the door just when he got off the elevator, and then they saw him go into the apartment. These were the Chevrolets. He did not know where they were. There was nobody in the hall. There were four apartments, three were occupied. The second occasion that his attention was attracted was about two weeks *afterward* the first. When asked if he had ever been convicted of a felony or misdemeanor, he replied that he had not, but he stated he had just come up from Lorton where he was serving time for attempting to haul stolen whiskey. That was the only time he had ever been in court. He had remained in the apartment house after the Warners had moved out, until it was sold, in 1924.

Thereupon to further maintain the issues upon her part, the plaintiff called **Ontronette Dorothy Hawkins**, who first being duly sworn, testified that she used to work for Mr. and Mrs. Warner from the 10th of January, 1924, when they were living at 3032 Q Street. Her hours were from eight o'clock in the morning until seven or after. She had observed Lt. and Mrs. Warner when they seemed to be quarreling together, but could not state exactly the date. The first time she heard them quarreling, she did not exactly know what it was about. They were in the next room to the kitchen. She heard Mr. Warner swear and Mrs. Warner cry. She could recall some of the words he used but would not like to repeat them. They were too vulgar to use. This occurred three or four times off and on. She never heard Mrs. Warner use any profane language toward Mr. Warner. She was working for the Warners when Mrs. Warner left. She recalled another occasion when she heard Mrs. Warner ask Mr. Warner *from* some money and he asked her what she wanted with it and she said to buy the baby some clothing. He stated he was not going to give her any money. Mrs. Warner then begun to cry and Lt. Warner began to walk up and down the hall. Nothing occurred further that evening. On another occasion when the witness was putting supper on the
82 table, she heard Mr. and Mrs. Warner arguing again. He asked her what she was going to do with the

money and she replied that she was going to buy food for the house. At the time she did not have enough food for the house. At times the witness herself would go without supper. Mrs. Warner would give her money to get supper with. This occurred three or four times, not only once. Every time they argued there was a lot of bad language used by Mr. Warner, but she never heard Mrs. Warner use any bad language. Shortly before Mrs. Warner left Mr. Warner in March, she heard Mr. Warner tell her to leave because there were plenty of other women in the house beside her. He said this more than once. He told her to get out of the house because there were plenty of other women in the house beside her. He made no reference to the child. The witness was in the kitchen at the time she heard it and the swinging doors could open. The Warners were in the next room. She could not be mistaken about what she heard. There was no one else in the apartment excepting herself and the Warners. When asked if she had ever seen Mr. Warner strike Mrs. Warner, she replied that she had shortly after she came there. Mr. and Mrs. Warner were in the next room, the bed room, next to the kitchen. "It was on the money proposition again. He pulled her hair—that was when she had long hair." She saw him do it. This occurred shortly before she left in March. The argument was still about money for the baby's clothing and money for the food and house. He struck her on this occasion in the face and she saw him pull her hair. She saw him do this once in January and once in March. They always had their arguments in the bed room. She remembered three or four other arguments but did not remember him hitting her on any other occasion. While she was working there the baby did not have very many clothes. It did not have any thick ones at all, although it was in the winter time. She heard Mrs. Warner ask Mr. Warner for money to buy clothes for the baby and Mr. Warner

83 did not give money to Mrs. Warner in her presence to buy clothes for the baby, that she knew of.

She did not know of Mr. Warner having drunk any liquor, to her knowledge. Mrs. Warner left Lt. Warner in March, 1924. She left on a Wednesday night. The witness was not there—she had left work—but she saw Mrs. Warner the following Thursday and Mrs. Warner came to the door and

told the witness to come with her, which she did. The witness also remembered another argument wherein Lt. Warner refused to buy chicken for the baby, ordering Mrs. Warner to buy lamb instead of chicken because chicken was too high. Thereupon upon cross examination, the witness testified that she was twenty-two years old; that she had worked for the Warners for three months, from January to March, while they were living on Q Street and left with Mrs. Warner, who took her on Thursday following Mrs. Warner's leaving. She went with her and worked for her about two weeks, while Mrs. Warner lived at Mrs. Shepherd's, and every other day after those two weeks for some time and then once a week. During the summer of 1925, she worked two days a week for Mrs. Warner. She could not say when it was that she began working one day a week, or when she had stopped working altogether, but was not working for her at the time. The witness lived at 3018 R Street, with her father, and did not know Mrs. Warner before she went to work for her. At the Warner home she did the cooking, laundry work and took care of the baby. Mrs. Warner would buy the food for the house. There were lots of times when the witness went home without her supper, when Mrs. Warner gave her money. Mr. Warner was not a good provider for his household and frequently they were without food in the house and she heard Mrs. Warner ask Lt. Warner for money to buy food. The witness had never gone to the Commissary with Mrs. Warner, but had seen Mrs. Warner come in with groceries when they had the automobile. She also heard Lt. Warner using language

so uncouth that she did not want to repeat it, several
84 times. There was no question about that—she could not be mistaken. She had never heard Mrs. Warner using bad language and never saw her lose her temper or become angry. Mr. Warner was doing the quarreling and Mrs. Warner crying. Lt. Warner would not take care of the child nor buy clothes for it. She heard Mrs. Warner ask him to buy clothes for the baby. Her memory was quite clear about it. She was asked if she ever signed any statement for anybody in connection with the case and she replied that she had signed statements when she came to the office of Mr. Leahy at the Investment Building, but had not signed any statements before she came to his office. She

was quite sure of that. She knew of Mr. Connolly, the Assistant United States District Attorney, who knew her father and who lived in the apartment house where her father was janitor. He did not come down one night and talk to her in her father's presence. There was no one else there when he came. She was then shown four pages of hand written matter and asked if her signature was not signed to each page thereof, to which she replied that it was; that she had sworn to the statement, and knew what it was to take an oath. But she did not know what it was she swore to before Mr. Connolly. That occurred when she went to the Investment Building when Mr. Leahy was present. She was asked if she did at the same time swear to another statement in typewritten form consisting of four pages, to which she replied that she did, and she remembered it; that she did not know what she was doing. When asked if she did not read the statement over and insert the word "that," with her initials, and asked if her handwriting in the word "that" before the word inserted before signature was not in her handwriting, she replied that that was her name but she had not read it over. She was then asked if she was not careful enough to read that over and write her initials over the change before she signed it, and she said she did not know about the change. She was then

asked if she had sworn to so much of the statement
85 which stated that she was acquainted with Paul

Warner and his wife and was employed by them while they resided at 3032 Q Street, N. W., from January 16, 1924, to March 13, 1924, and that from March 13th, 1924, she had been employed by Mrs. Warner at 1002-16th Street, N. W. When asked if that statement was true, she replied "yes." She was then asked if so much of the statement was true as read that during the time she was employed at the Q street house she had never seen Warner drunk, or take a drink; that he was always polite and courteous to his wife and that she had never heard him refuse her or use abusive or profane language toward her, and she replied that that was in the statement. She was then asked if it were true, as appeared in the statement, that three weeks after she went to work for the Warners, Mrs. Warner left the house, saying she wasn't coming back and if Lt. Warner asked the witness where Mrs. Warner was to tell him she

did not know, and she did this on three other occasions before she finally left the Lieutenant, and that on one occasion she took the baby with her, but that at the other times she left the baby and went alone, to which she replied she could not say every time to her own knowledge, but she did remember her leaving the baby with her and saying she was not coming back. She was further asked if the statement were true wherein it read that during her employment at the Q Street house the baby's care was left mostly to the witness and Mrs. Warner very seldom took the baby out with her, to which she replied that that was not true; that Mrs. Warner did take her out. She was then asked in the statement read that if Mrs. Warner took the baby out she took the witness along to care for her, and she said "yes." She was then asked if the statement were true wherein it read that when the witness went to the Q Street house on March 15, 1924, Mrs. Warner had gone; that the Lieutenant was preparing breakfast, when Mrs. Warner returned and commenced removing articles from the trunk.

86 The witness replied that she had never seen her remove any articles. She was then asked if she remembered where the statement read that Lt. Warner asked Mrs. Warner what she was doing and she replied that she was going to move, and the witness replied that yes she remembered that. The witness could not swear that the statement read that Mrs. Warner then seized Lt. Warner's coat which was hanging on a chair in the dining room and removed some letters from it and left the room. She did not remember that. Neither did she remember that the statement read that Mrs. Warner left the room with the letters and when she returned refused to tell Lt. Warner what she had done with them. Neither did she know anything about the statement in the affidavit that Mrs. Warner directed the witness to pack away the things and that the witness helped her carry two dining room chairs to 2728-22nd Street, where they stayed about six weeks before going to the 16th Street house, and that later the two went back and got the dining room table and also part of the china and glassware. She knew, however, that Mrs. Warner had the automobile as stated in the affidavit. She was then asked further with reference to the affidavit and the statement with reference to the automobile therein, as to so much therein that read:

"I worked at the Q Street house from eight A. M., until 7 P. M., daily, and from eight A. M., until three P. M. on Sundays. I was never there in the evening and never spent the night there. I work for Mrs. Warner at present two days a week, from 9:30 or ten A. M., until six P. M.

Given at Washington, D. C., the 16th day of October, 1924.

(Signed) ONTRONETTE DOROTHY HAWKINS.

Subscribed and sworn to before me this 16th day of October, 1924.

JOSEPH C. CONNOLLY,
Notary Public, D. C."

She was asked if she remembered filing that affidavit to which she replied "When I was in your office." The next day, she stated, she was asked to come to Mr. Leahy's office, which she did. Mr. Connolly and Lt. Warner
87 were outside when she got there. Mr. Leahy asked her to tell what she knew about the case and never mind who it hurt, but to tell. She was then asked if she did not remember signing the four pages shown her, to which she replied that she remembered a paper was put before her but what it was she could not say. When asked if she could read English, she said she could read some, but not very much. Thereupon she was asked to read several pages of the statement to the court, which she did. She stated that she asked Mr. Connolly if he was a lawyer and he said he was Mr. Warner's lawyer. He came to see her in her apartment. He had some papers with him, but she did not know what they were. She did not sign the papers at her house but at the Investment Building. Upon re-direct examination the witness testified with reference to one of the exhibits shown her that it was not in her handwriting; that there was a lady at the desk but who she was she didn't know and the first time she saw it was after it was written. Mr. Connolly came to see her about the case. He lives in the apartment house where her father is. She did not know he was a lawyer but she asked him and he said he was one of Mr. Warner's lawyers. He left

the papers with her, but she did not read them and did not sign them at her house. They were signed by her at the Investment Building where Mr. Connolly left a slip for her to go. She did not know where the building was. She went into a room with Mr. Warner and Mr. Connolly and Mr. Leahy. Mr. Connolly asked her then if she knew Mr. and Mrs. Warner, she replied she did. Then he asked her if she worked for them and she replied yes. Then Mr. Warner asked her how Mrs. Warner dressed the baby, and she replied that the baby was not clothed well. Mr. Warner then said that he knew Mrs. Warner put sheets and towels on the baby when the witness came for the baby, to which she replied that she did not know anything about that. Mr. Warner then asked her about some of the furniture removed from the house and she replied that she knew nothing about that except the chairs. Mr. Connolly then asked her if Mrs. Warner had no food in the house and she said no; that some nights she had to go home without anything to eat. He asked her then if Mr. Warner paid her regularly and she said yes. She then said when she was asked whether she ever heard Mrs. Warner swear that she had not. However, Mr. Connolly told her that she had, and she denied it again and Mr. Connolly said alright, but that she had heard Mrs. Warner swear at Mr. Warner. Then she further testified that it was true that she had heard Mr. Warner swear at Mrs. Warner, but never heard Mrs. Warner swear at Mr. Warner. Then she stated Mr. Warner and Mr. Connolly told her not to say anything to Mrs. Warner about the matter of being at the Investment Building or Mr. Connolly's having been to her house. She was then shown Exhibit No. 15, and asked when that was sent to her and she stated she had not seen it at all; that that was her name on it, but she had not read it. She signed it at the Investment Building after the conversation. She did not see anybody writing the statement out and had not read it. Both Mr. Warner and Mr. Connolly asked her to sign it; she did not ask for any chance to read it. They did not explain it to her, she did not know what was in it. Mr. Connolly did not tell her she was taking an oath, and she did not know she was taking an oath. She did not raise her right hand and he did not

ask her anything about doing so. And she did not see Mr. Connolly take the seal and stamp his name on the exhibit. Exhibit No. 15 was the one entirely in handwriting. Witness then stated she signed Exhibit 14, shown to the witness in typewriting on the same day she was down at the Investment Building. She did not know who prepared the draft of the exhibit. She could not exactly say whether she heard the statement dictated because Mr. Leahy, Mr. Connolly and Mr. Warner were close together, talking and were quite a distance from her, although she was in the same room. She sat in a chair and waited until it
89 was brought to her. Both exhibits were shown her together. Mr. Connolly told her to sign them. She asked why and he said "O, there ain't nothing to that, Nettie, go ahead and sign it." And she signed it. No one read either of the statements to her and she did not. The reason she signed them was because they told her to sign them and she had to sign them, there was nothing to do. Nobody explained to her that she was swearing to anything; no one asked her to take an oath, no one asked her to raise her right hand and swear, she did not take an oath, or raise her hand or anything. No one asked her to do that. She did not ask anybody to read them before she signed them and no one told her to do so. She asked Mr. Warner for a copy, and she went to the Navy Department where Mrs. Warner told her to go, and Mr. Warner said he would have to see his lawyer about it. He did not see his lawyer. She denied that she ever stated to Mr. Connolly, Mr. Leahy or Mr. Warner that Mr. Warner always treated Mrs. Warner in a courteous manner and they did not ask her whether Mr. Warner ever beat Mrs. Warner. Mrs. Warner left Mr. Warner in the middle of March and went to live with Mrs. Batts on Kenyon Street. On 22nd Street she always had her things with her. She did not say she went from the Q Street house to the house of 22nd Street. While the witness was working for Mrs. Warner, Mrs. Warner always gave the baby very good attention all the time. She bathed the baby sometimes and sometimes the witness did. She never told Mr. Connolly, Mr. Leahy and Lt. Warner that Mrs. Warner left the care of the baby almost entirely in her hands.

Thereupon to further maintain the issues upon her part joined, the plaintiff called **Mrs. Delmar Shepley**, who being first duly sworn, testified that she lived at 2827 22nd Street, N. W., and that her husband was a Senior Lieutenant in the Navy, stationed on the Shaumont, a transport; that she knew Mrs. Natalie Warner, the plaintiff in the case, having met her first some time around in March "right
90 after all this happened." When Mrs. Warner first came to her house she had the baby with her, then about eighteen months old. She never saw any baby have less clothes. The weather was cold and the baby did not have sufficient clothing. It was a delicate baby and she never saw one that looked like that. Mrs. Warner was very poorly dressed and did not have hardly any clothes on. She never knew Mrs. Warner at all before the latter came to live with her. It was true the witness said that Mrs. Warner came to her home and remained, she thought, a little over a month. Mrs. Warner acted toward the child like every other mother would, doing everything she could, taking care of it and not neglecting it. The witness has eleven children. From the witness's home Mrs. Warner went to the home of Bell. After Mrs. Warner left her house she would frequently come and see the witness and every time she visited the witness's house Mrs. Warner had taken good care of the baby as any mother could, and the witness had good occasion to observe this, as Mrs. Warner was at her house nearly every night.

Thereupon to further maintain the issues upon her part joined, the plaintiff called **Mrs. Blanche Bell**, who being first duly sworn, deposed and said that she lived at 1420 M Street, N. W., and knew Mrs. Warner since April, 1924. She also knew Mrs. Warner's child. The witness had also reared children herself and naturally noticed the treatment of Mrs. Warner toward the little girl. Mrs. Warner lived at the witness' home from April, 1924, until December, 1924, and she has seen Mrs. Warner and the baby frequently since. Mrs. Warner had an apartment at her home and her treatment toward her child was that which almost any mother would give and she took special care of the child, and the witness never knew of her to neglect the child. When Mrs. Warner left her home she went to Wis-

consin Avenue and the witness did not see her very often.

91 Relative to the treatment which Mrs. Warner had given the child since she had left the home of the witness, she replied that the child had plenty of care and every consideration the child could have under the circumstances, so far as witness knew. Upon cross-examination the witness testified that she did not know Lt. Warner but had met him and had seen him when he had called for his child some times. On those occasions, so far as the witness knew, the child was dressed all right, was clean and did not seem to want for clothes. When she first came to the house, however, the baby had very little clothes.

92 The deposition of **William O'Connell**, read in evidence in behalf of plaintiff, on direct examination, was substantially as follows:

That he had searched in and around Pensacola to locate the colored woman named Laurice Jackson and had been unable to find anything about her, except as to where she had always lived, and was unable to find any tract of her. There was no cross-examination, and a subpoena was exhibited directed to Laurice Jackson to appear and testify before the notary taking the deposition, which subpoena was returned by the United States Marshal; that he was unable to serve it and the witness was not to be found.

The deposition of **George Karl Hoffman**, read in evidence on behalf of the plaintiff, was, on direct examination, substantially as follows:

At the time of testifying he was thirty-three years old and Assistant United States Attorney for the Northern District of Florida. He knew the plaintiff, having made her acquaintance about the middle of March, 1922, at Pensacola, Florida. He had known the defendant sometime prior to that date. About the 15th of March, 1922, Mrs. Warner called on witness and secured his services to represent her in filing a bill for alimony against the defendant. He prepared a Bill of Complaint, which was never signed by the plaintiff or filed. He still had it. At the time that Mrs. Warner came to his office she had a

bruise, as best as witness could remember, on her right cheek about the size of a quarter and a bruise upon her elbow, on her left arm. He noticed the bruises at the time of Mrs. Warner's first visit to his office, at which time she was quite excited. He prepared the Bill of Complaint the next day, or within a couple of days. He arranged for her to come back later, which was about three days afterwards. On this second occasion she had been in his office only two or three minutes, when Lieut. Warner came and insisted on talking with Mrs. Warner in his office. He had had

93 Mrs. Warner come for the purpose of inspecting the Bill of Complaint which he had prepared, but she never did so, because of other things that happened, and he did not recall whether she had seen the Bill of Complaint to see whether he had stated the matters correctly. On the second visit of Mrs. Warner to his office, when Mr. Warner came in, the witness told Mr. Warner that he would see him after an interview by witness with Mrs. Warner. Mr. Warner was insistent on talking to his wife and on admission into the witness' office; Mr. Warner was admitted and as soon as he entered began to protest his affection for Mrs. Warner and witness interrupted him and asked him to be seated and calm himself until the witness talked with Mrs. Warner, which the defendant did. Mrs. Warner said she believed a reconciliation was impossible and talked of her mistreatment by Mr. Warner and pointed to the marks on her face and arms and said Mr. Warner had not provided her with adequate clothing, referring to the hat and dress she had on. Witness asked Mr. Warner what he had to say? Mr. Warner seemed to get much excited and in his protestation of affection became quite agitated, left his chair and approached her. She got out of her chair and ran behind the book-case. Mr. Warner followed her and witness followed him. She was crouched in the corner with Mr. Warner over her, pulling at her frantically and using all sorts of endearing terms and she was demanding that he not touch her; that he leave her alone; that she did not want to have any more to do with him. Witness put his hand to Mr. Warner's shoulder and Warner immediately turned around and faced him and witness reminded Warner that the situation should

not be this way. Warner readily composed himself and came back and sat down. With a little insistence upon the part of the witness, Mrs. Warner came back around the book-case and sat down. Witness asked Mr. Warner if the wife would get a new dress and a new hat, and Warner said she would. Mrs. Warner said she would keep
94 the keys to the automobile, and another discussion took place and both went back of the book-case again as before. Witness followed them. They came back and composed themselves. Finally both left the office, going down the hall together. Witness thought they had become reconciled. At the time of the second instance or running behind the book-case, Mr. Warner became so excited, the witness had to tell him that unless he was more composed and quiet, the witness would have to insist upon his leaving the office. About this time the noise attracted the attention of the Deputy United States Marshal Cuyler P. McMillan, who opened the door and inquired whether assistance was needed, but none was necessary because Mr. Warner immediately calmed down. In the course of the visit, Mrs. Warner said that Mr. Warner had inflicted the bruises upon her face and arm. When asked if Mr. Warner denied it, the witness replied "I don't recollect he either denied or admitted, I had been somewhat insistent about his keeping quiet." The plaintiff gave a sort of resum e about the defendant using vile language, his mistreatment of her and her humiliation in the presence of the servants. But, as far as witness could recollect, the defendant did not deny the correctness of her statements. On March 18, 1922, witness sent a letter to the defendant, enclosing a bill for \$50.00, for professional services. He has a carbon of the letter, he does not know where the original is. The carbon of the letter and the bill was introduced in evidence as plaintiff's exhibit B-1 and B-2. On March 23rd, 1922, Lieut. Warner paid him by check, which was enclosed in a letter, which was received in evidence and marked plaintiff's exhibit B-3. On cross examination, witness said Mrs. Warner told him that the defendant had followed her to the witness' office, and immediately upon his getting into the office, the defendant commenced his protestation of affection, using endearing terms. Witness was asked, "You

95 have stated that he appeared excited, was he apparently going to do her violence, or was his excitement of an amatory nature?" "I don't know about the violence, but he seemed unusually vigorous in his love making, and a little bit violent in his protestations of affection. I do recall that he used such expression as 'come on, go back home with me,' or words to that effect." The defendant didn't use any vile language or indecent references. His talk was directly along the lines of trying to get her to go home with him. He seemed anxious for her to go with him, forget her troubles and go back to the Air Station. When witness remonstrated with the defendant about his actions in the office, the defendant demonstrated good manners, calmed down immediately and composed himself. When witness saw the defendant after that, he acted all right. On re-direct examination, witness stated that the Deputy Marshal's office was right next door to him and the Marshal heard the noise through the transom, over the door; the transom was closed. Mr. Warner seemed to lose control of himself. Mr. Warner did not express any regret at what he had done to his wife or any promise to do better in the future. His entreaties were confined to her leaving the office and going with him; he said nothing about the past or future. The defendant's statements at the time, indicated that the defendant knew why the wife had come to the office. On re-direct examination, witness stated that the noise which attracted the Deputy United States Marshal was made by Mrs. Warner as well as Mr. Warner; "She joined in the argument, and in all probability was talking in a loud voice as well." Witness was asked if the defendant did not get on his knees and drag at the hem of the plaintiff's skirt and answered "They were both in a stooping posture and Mr. Warner did have hold of her," but he could not recall that he was holding on the hem of her garment. Most of the defendant's excitement was apparently pleas and entreaties.

96 To maintain the issues upon his part joined, the defendant produced the testimony of **Joseph V. Connelly**, who, being first duly sworn, testified that he was a member of the Bar of the Supreme Court of the District

of Columbia, the Court of Appeals, and an Assistant United States Attorney, in the office of the United States Attorney for the District of Columbia, as well also as a Notary Public during October, 1924; that at that time he resided at 3020 R. Street, Northwest, and was acquainted with the janitor of the apartment house there who was a colored man by the name of Hawkins; that with him lived the witness, Nettie Hawkins, her mother, and a younger sister, a girl about eighteen; that he was acquainted with Lieutenant Paul C. Warner for the past two years, and interviewed Nettie Hawkins with reference to her knowledge of domestic troubles at the Warner household, as a result of which he interviewed Nettie at her father's place, in the presence of her sister, Katherine; that he reduced that interview to writing, and thereupon he identified defendant's exhibit No. 3, and testified that the entire exhibit was in his handwriting with the exception of the line Ontronette Dorothy Hawkins, written in the hand writing of the said Ontronette Dorothy Hawkins on each of the pages thereof; that the notarial seal thereon was his, and that as Ontronette gave him the facts he wrote them down and she signed each; that the writing was done in her house and in her presence, and nothing was written thereon except what Ontronette, otherwise called Nettie, told him; that all information contained in said exhibit was given to him by Nettie in her house and written at the time she gave it; that he distorted nothing, and in some instances probably summarized what she said. Thereupon the witness was shown defendant's exhibit No. 14, and asked where he first saw that, to which he replied, "In the office of William E. Leahy, Examining Counsel, at the Investment Building, 15th & K Streets, Northwest." His attention was then drawn particularly to the date on Exhibit No. 13, which bore the date, the 16th of October, 1924, and the witness testified that that was the date he was present at Nettie Hawkins' house, and Nettie knew he was a notary public, and that he took her oath at the time; that she held up her hand and that he took her oath. Subsequently he came with Nettie to the office of William E. Leahy, at the Investment Building, meeting her there and having a conversa-

tion with her wherein they reviewed the affidavit Exhibit No. 13. He was certain that she knew the contents of that exhibit, and remembered counsel discussing with her the contents of the same, as well also as dictating in her presence Exhibit No. 14 for which she waited while the girl in the office typewrote it. She then read each page herself. On the fourth or fifth page of exhibit No. 14 the witness' attention was directed to a correction with the initials O. D. H. thereon, and he was asked who initialed and corrected the same, to which he replied that Nettie had done so. The witness' notarial seal appeared upon the exhibit as well also as his signature. The seal was affixed to Exhibit No. 14, on the 18th day of October, 1924. His attention was then drawn to the time when each of the affidavits, Exhibits Nos. 13 and 14 were signed, and he stated that Exhibit No. 13 was not signed in the office of counsel, but at Nettie's father's house. Exhibit No. 14 was executed in the office of counsel. That at the time exhibit No. 14 was signed, they were probably together about an hour. Upon cross-examination the witness testified that he was not an Assistant United States Attorney in 1924, but was chief clerk in the office of the District Attorney; he was not and never had an office at Mr. Leahy's office; never represented Mr. Warner; and never did more than advise him in regard to an automobile license on one occasion, and perhaps some dealings in connection with this case which he could not recall, other than Lieutenant Warner had consulted him with regard to the reasonableness of a fee which had been charged by an attorney retained before he retained Mr. Leahy. The witness was familiar with the pendency of the present suit, and the issues involved therein through information obtained from Lieutenant Warner. Lieutenant Warner did not ask him to assist him in preparing his defense other than taking the affidavit, and the witness' recollection was that Lieutenant Warner knew that Nettie lived in the same apartment house in which the witness lived, and at that time Mr. Leahy was not his counsel. The witness did not consult with the other lawyer about what he was doing for Lieutenant Warner. He was sent to the apartment house to interview Ontronette Hawkins by Lieutenant Warner. The witness did not think

he spoke to Mr. Leahy about the matter at all until he came to his office the time the second affidavit was signed, although he thought Mr. Leahy knew that he was going to obtain the affidavit for Lieutenant Warner. He
98 knew Ontronette lived at that apartment house, because he had lived there ten or twelve years. His recollection was that he went there to get a statement of what she knew about Lieutenant and Mrs. Warner; he read neither the bill of complaint nor the pleadings before he went there, and Lieutenant Warner did not tell him his side of the story before going there, merely telling him that he and his wife had separated and that divorce was pending, and the witness presumed he said Nettie had material facts about the case, and asked witness to get an affidavit about it. The witness could not tell whether Lieutenant Warner told him his side of the story before he got the affidavit or not, but would not deny that Lieutenant Warner had told him his side of the story before he saw Nettie, but could not tell whether it was before or after.

It was simply one affidavit to him and that was all. He saw Nettie when he first got to the apartment, and cannot recall whether he saw her father at all. Nettie was in the house, in the room next to the rear room, the apartments running the entire length of the house; it was at night in the neighborhood of eight or eight thirty. The witness was living in the building at the time. He did not tell her that he was an Assistant United States Attorney because he was not at the time, but probably told her that he was a notary public and came to get a sworn statement; he must have told her that. He could not say except what he generally did in regard to those things. He tried to reduce to writing what the girl told him in a general way. His recollection was that he questioned her and wrote her answers partly and he talked without questioning too. It was a combination of both. He wrote while she was talking. Some times while she was talking he wrote, and sometimes he stopped and talked with her and then he continued to write, and then ask her another question, and that would start her talking again. He could not say he summarized everything, but he may have a verbatim statement. He guesses he wrote all in substance. He did not consider

himself an enemy of little Nettie, having known her from childhood. He cannot recall how much he was paid for his services, but it may have been \$10. or \$25. Lieutenant Warner has not paid him any other fee since that time. The fee on this occasion was neither \$100. nor \$50. Sometime later he asked Nettie to go to Mr. Leahy's office because his recollection was that Lieutenant Warner told him that

99 Mr. Leahy wanted the statement in sufficient detail for him, and the statement he obtained was not sufficient to suit him. In the apartment house he supposed he talked with Nettie at least a half an hour and reduced it to writing, taking the paper along with him. His recollection was not clear whether he took his seal with him, or not, but he had Nettie sign every page, telling her to read it and sign each page as she read it. She did read it before she signed it. And he told her to raise her hand and make a oath. Of that he was sure. This occurred at the place where that affidavit was executed. Of that he is sure. He could not tell exactly whether he told her he was a notary public or not, but she understood she was swearing to a statement, and particularly to the statement to which she subscribed. He presumed he told her he was a notary public, but he could not recollect his exact language at the time. He presumes he either carried or mailed the affidavit to Mr. Leahy, and then at the request of Lieutenant Warner, and asked Ontronette to go to Mr. Leahy's office, saying Mr. Leahy wanted her to go there. He was present in Mr. Leahy's office when the affidavit, exhibit No. 14, was dictated by Mr. Leahy. When asked with reference to the use of particular words in the affidavit, the witness replied that it was dictated by Mr. Leahy; that she told the method or manner in which the language was used, and his recollection was that Mr. Leahy questioned Ontronette as he has done on previous occasions and then dictated to his stenographer what she said; that Mr. Leahy first had a talk with her in witness' presence, and went over the ground and dictated to his stenographer what was contained in the affidavit. Exhibit No. 14 was substantially what Ontronette had told him in Exhibit No. 13, with possibly other matter added or in detail. The witness could

not recall what Ontronette had said in either affidavit, beyond the affidavits themselves.

Whereupon to further maintain the issues upon his part joined, the defendant introduced the testimony of **Ivan King**, who, being first duly sworn, deposed and said, that he was then living at Manketo, Illinois, having lived there since the September before; that he had formerly been in the Naval Service of the United States from March, 1917 to 1922 in the Medical Corps; that he was then in the Reserve Corps, and was just back from across the sea; that at one time he was stationed at Pensacola from September, 1919 to 1922; that he first met Lieutenant Paul C. Warner in 1919 when he was a junior lieutenant.

The witness at that time held the rank of senior lieutenant. He first met Lieutenant Warner at the Naval Air Station in Pensacola where he resided after a few months duty. The witness' quarters were located just outside the main wall and inside the main gate. While Lieutenant Warner resided at the Station he was in the officers' quarters, when single, and later moved and kept quarters next to the witness. This occurred in the spring of 1921, as the witness remembered. Their quarters were about thirty paces apart, and he roughly estimated a pace at two and a half feet. Their yards adjoined with nothing between Lieutenant Warner's quarters and those of the witness. Lieutenant Warner's quarters were in a single, separate house, such as the witness', and Mrs. Warner lived there with him. The witness had occasion to see them both from the spring of 1921 until they moved away in the spring of 1922, roughly, for a period of about ten months. At that time Lieutenant Warner was Aide to the Commandant, and every day the witness would see him. Commonly, the Warner family and that of the witness were friends, drifting back and forth somewhat, and playing cards and such things together. That the witness is the father of two children, but while in Pensacola, living next to the Warners, had one, a boy. He saw Lieutenant Warner with his boy, and, as occasionally he saw him, would come over and talk to him, and put his arms around him. The witness heard him say once that he would like a little boy like that, and this while Mrs. Warner was there at the Post. Shortly

before the Warners moved away to Washington, in approximately April, 1922, the witness called professionally to the Warner household to see Mrs. Warner, and while there had a conversation with her with regard to her condition. He requested to examine her generally, but she refused to permit him, although he told her that he was in the dark until he could examine her thoroughly. She said that she would prefer not to be examined. He talked with her further about what she was doing in regard to her condition, and she told him she was in the habit of taking cold water douches and baths. He told her to stop it as it was not good for her. At that time he was called to the house by Lieutenant Warner. When asked if he had seen Lieutenant Warner with his wife at the Post and in their home, he replied that he had, and that he had noticed how

Lieutenant Warner had treated her, in his opinion
101 Lieutenant Warner treating her very nicely, and witness never saw anything out of the way. He had never seen him abuse her or upbraid her or curse her or use vile language toward her or get in a rage at her. When asked what Mrs. Warner's conduct was toward Lieutenant Warner, he said at times very good and at times very bad. She was subject to fits of temper and would use abusive language. That he had heard her in that condition but could not tell exactly what she was saying; that at night sometimes he could hear them talking, especially Mrs. Warner, from their, the witness' home across the yard into the Warner house. Her voice would be raised in an angry tone. Several times he had heard this, possibly three or four times at least. At his own house at one time Mrs. Warner was learning to play cards and she took objection at some little comment that was made while she played and became very angry and threw down the cards. He had observed Lieutenant Warner's conduct toward his wife, and it was perfect. He further had never seen Lieutenant Warner drunk, or in a condition that denoted he had been drinking. He had seen Lieutenant Warner at times with others in the home when they might be taking a little drink, but Lieutenant Warner always refused it; he had never seen Mrs. Warner when she was carrying any bruises or contusions about her, and never heard her complain about it to him although he was a medical doctor. Since March, 1922,

she never sought his assistance for any injuries she had received. His attention was then re-directed to the occasion when he was called to Mrs. Warner's home, on an occasion which he had fixed sometime in April, 1921, in the spring. He recalled that subsequent to that time he knew that Mrs. Warner went to the hospital, a civilian hospital, at Pensacola. When asked further as a professional man what effect the taking of cold douches might have upon one who is pregnant, he replied that it was deleterious to her health and might produce very serious results; might even produce abortion if the woman was pregnant. When he saw Mrs. Warner while she was living on the Post beside them, she was always dressed very nicely, and he never saw her at any time when she appeared to be neglected. She usually wore clothes around the house that he considered were dress up clothes. He had taken dinner at the Warner home and they had a servant there at the time and there was no in-

102 dication of neglect in the line of food. Upon cross-examination the witness testified again that he was living at Manketo, Illinois, and was in the Reserve Corps; that he came to Washington partly to testify in the case, having other business at the same time, which was taken care of. From September, 1919 until June, 1922, he lived in Pensacola, ten months of which time the Warners lived next door to him. From the middle of his house to the middle of the Warner's house was approximately thirty steps. He and his wife used to visit Mr. and Mrs. Warner for several months after they lived there up until the Fall. Quite frequently they visited first; he would see Lieutenant Warner after the day was over and also on Sunday. He knew that Mr. and Mrs. Warner had some difficulty while they lived at Pensacola, but had never heard of Mr. Warner having struck his wife. He did not know that she had gone to see an attorney by the name of Mr. Hoffman although he had heard of him as an attorney in Pensacola and as Assistant United States Attorney there; that he had never heard of Mrs. Warner going there. He knew there was trouble between Mr. and Mrs. Warner, he sensed it; although it was none of his business, he knew it. He did not know they lived apart for a limited time, but believed she had gone away for two or three days, although he didn't know exactly what had become of her. He made it no business of

his to find out anything about the matter at all. Mr. Warner never said anything to him about his troubles, being very modest about it, and the witness only had to get it as he would happen to hear or see of it. He never saw Mr. Warner take a drink of whiskey in his life and never saw him under the influence of it. Never in his presence had he realized or sensed that Lieutenant Warner had been drinking, never. He never took a drink in his home, although he offered him one once, and Lieutenant Warner refused it. He never saw Lieutenant Warner drink in his own home. He had seen Mrs. Warner once in a professional way, Lieutenant Warner having called him to the residence, and he went over to see her. He did not know that she had any physician at the time. He knew a Dr. Payne in Pensacola, and understood that he, Payne, took care of her later. He knew Mrs. Warner went to Boston, through hearsay. He did not see her go but he knew that she went, having heard about it from the women. He did not pay much attention to her going and could not tell how long she was gone but imagined it was two or or three
103 weeks, maybe, or about that time. It was some little time. As near as he could remember it was in 1921, in the Fall, but he could not tell the exact month. Shortly after she came back from this trip he was called to the house to attend her, professionally. Lieutenant Warner did not tell him what the matter was with her, but said she was complaining of pain, but did not know what was the matter. He called the witness in to find out what was the matter. Mrs. Warner refused to let him examine her enough so that he really could tell what was the matter. She was very reticent about the matter and would not answer questions very readily, and he could not absolutely diagnose the case. He had it in his mind but couldn't say professionally because he wasn't allowed to complete the examination. In a matter of two or three days thereafter she went to the hospital. Neither the witness nor his wife visited her there; Mrs. Warner admitted at the time using cold douches, in response to his question as to what she was doing that would cause the abdominal pain. There are many results which might flow from the use of cold douches. It might cause quite a good deal of trouble in the female organs, setting up chronic contractions. The witness had no way of know-

ing absolutely that this produced that result in her case. When asked with reference to his testimony that he had heard or seen Mrs. Warner talking in a way that made him believe she was quarreling with her husband, he replied that it was not so much that he saw her quarreling, but he heard her many times. He could not distinguish what she said, but could hear a word now and then, and did not think at that time of ever having to testify about it and made it no business of his so far as he could help, but he couldn't help hearing the quarreling, living next door. Mr. Warner was a very mild mannered man. Very seldom did the witness hear him raise his voice; he never heard him speak loud; he never knew Mr. Warner to strike his wife in Pensacola.

Thereupon, upon re-direct examination, the witness' attention was again directed to the response he had made to the question that he had sensed there was trouble in Pensacola, and asked what he meant by his testimony, to which he replied that in the night sometimes he could hear this jowling going on at the Warners when people ordinarily would be apt to be asleep, and the witness' wife and he often mentioned time and again that they wished they would hush up. It would be Mrs. Warner's voice
104 that he would hear. On two or three occasions he had seen Lieutenant Warner after he had heard Mrs. Warner's voice in this manner, go out into the back yard, and stand around and smoke. He would still hear her voice after Lieutenant Warner had gone out into the yard.

Thereupon, to further maintain the issues upon his part joined, the defendant produced the testimony of **Mrs. Wilmar Nichols King**, who after being first duly sworn, testified that she was the wife of Doctor King and lived at Manketo, Illinois, at the time; that she knew both Lieutenant and Mrs. Warner, having first made their acquaintance in 1921 when they were living at the Naval Air Station, Pensacola, in quarters on the Station; about fifty feet from Lieutenant Warner's quarters, each being furnished a separate home. Mrs. Warner then lived with the Lieutenant. The Warners first came to the station in the early part of 1921

and left in the early part of 1922. While they were living beside them they would visit back and forth, and quite frequently saw Mrs. Warner. They played cards a great deal together. Lieutenant Warner was then Aide to the Commandant. She observed Lieutenant Warner's treatment of his wife, and said he was very courteous to her. She never heard him when he would fly off into a rage, use vile language, curse her, or use obscene language. She never saw Lieutenant Warner at any time when he was in a rage or angry. Mrs. Warner always was dressed in very nice clothes. She also observed Mrs. Warner's treatment of Lieutenant Warner, and stated that she would have fits of temper, and at night time could hear her jowling away at him all the time. When asked if she had ever seen her in one of those fits of temper she replied that she recalled on one occasion, she was over at Warners, that Mrs. Warner had been calling Lieutenant Warner on the telephone in regard to the car, and he was busy at the time and couldn't bring the car to her. She got angry and threw the receiver on the hook of the telephone and she used some rather violent language and said that she would like to wring his neck if she could get hold of him. At this point the plaintiff made a remark which was not audible to the reporter, and counsel for defendant objected, saying "May we have remarks cease, if your Honor please, while witnesses are testifying?" The Court "Yes." The witness was then asked if she recalled an incident at a card game, to which she replied that she did; that on one
105 occasion they were playing cards at witness' house, and she and her husband had taught Mrs. Warner how to play. She felt sorry for Mrs. Warner at first, being a foreigner in this country, and one who didn't seem to know the American ways as the Americans do them, and it seemed as though the witness was sandwiched in between two foreigners. Mrs. Dodd was on the one side of her who was a Persian, Mrs. Warner on the other who was a Russian, and she and her husband taught them how to play cards. One night they were playing with the Warners and witness could not recall what remark was made, but something was said concerning a misplay made by Mrs. Warner. She became very angry about it and threw the cards on the table and refused to play any more. She was then asked

if she had ever had a conversation with Mrs. Warner with regard to children and how she felt toward having children, to which the witness replied "Yes." One day we were sitting out in front of our house. She was sitting on my porch and Mrs. Dodd came down the street and was expecting a child, and Mrs Warner said, the American women are immoral, immodest, and indecent women. And I asked her what she meant by that, and she said, by going out in such condition as that, and I said, what would you do if you had a child, and she said she did not intend to have any. She said she thought she knew a preventative, and that if she should be so unlucky as to have a child she intended raising it as a Russian, and I asked her how she would accomplish that fact and she said she would go back to Russia and raise it as a Russian, and would get all she could out of Lieutenant Warner before she went back. I asked her why she married him and she said for a home and what she could get out of him. She was then asked if she recalled an incident when the flag was being lowered at the Station at what was called "sundown" and was asked to tell the Court about that incident. The witness said "Well, preceding that, before, though, she said she hated America and Americans and that she wished that the Germans had gone on until they defeated them." Then I said I didn't care to have any more to do with her.

"Q. Did you tell her at that time that she couldn't come to your home?" A. I asked why she married Lieutenant Warner if she was against the Americans, and she said for a home and what she could get out of him."

She was further asked with reference to an incident where some men were lost in a balloon nearby the Station, that the witness stated Mrs. Warner said that was good enough for them. Mrs. Warner had been at the Post 106 "ever so many months" when the witness told her she didn't care to have anything further to do with her after her statement with reference to her feelings with regard to the Americans. The witness was then asked "Now, do you recall whether those sentiments were expressed generally around the Post, by Mrs. Warner?" No, I told her she shouldn't express such sentiments. Supposing someone should report her, and she should be

called up on it, and she said she could very easily lie out of those things in any court, regardless. That the Judge would take her word, and a foreigner's at that, before they took an American's, and I said it would be a darn poor Judge and a darn poor Court who would do that; that would take such remarks against the American women who are born and raised in America, that is certainly the way I felt about it too, anybody who would make remarks about Americans. Upon another occasion the witness recalled that a Japanese had gotten on the Station, or two Japanese. The gates had been locked. The next morning she remarked to Mrs. Warner about this and said it seemed to her very serious inasmuch as they lived immediately in front of the magazine. After she said to Mrs. Warner "supposing they should set fire." She said it didn't make any difference to her so long as she was out of there. And the witness said, do you realize they would have blown up the whole of Pensacola and the Station as well? To this Mrs. Warner made no reply. The witness now has two children, but at the time she was living at Pensacola had one, a little boy. Lieutenant Warner used to pick him up, and state he would like to have a little one as cute as that. On cross examination the witness testified that she and her husband, Dr. King, went to Pensacola in 1919 and remained there until 1922; that the Warners came to the Station in 1921, Mr. Warner having been there before he was married. The witness did not meet him until after his marriage, however. It was in the latter part of May according to the witness' best recollection that the Warners came in 1921, living in a house adjoining theirs. About a week or ten days after she arrived the witness met Mrs. Warner. There were many ladies on the Post, twenty-five, fifty, or more. At first when she met Mrs. Warner she felt sorry for her inasmuch as she was a foreigner and not used to our ways, and was friendly with her, and visited her house.

107 She did not keep track of the number of times, but they were back and forth like anyone who is friendly, seeing each other every day. They were not so very intimate. Witness asked Mrs. Warner once how long she had been over from Russia and she could not recall how long Mrs. Warner stated but she did remember Mrs.

Warner's saying she had an uncle who was a Doctor in Boston. When asked again whether they were very intimate, the witness replied that she was for several months until Mrs. Warner started making those remarks. She did not tell Mr. Warner about them as she felt it wasn't her place to go into some one else's affairs. These remarks were made sometime after September, 1921. She could not exactly fix the month, it was October or November when the remarks about hostility to America were made. Mrs. Warner stated she hated America and Americans, and wished that the war had gone on long enough for Germany to win. She did not tell Mrs. King she had lost a brother in the war, and did not tell her that her brother had fought on the side of America, and the witness didn't know that, or that she had a brother. She had mentioned a mother being in Russia and when asked the question "Well you knew Russia was on the side of the Allies, didn't you?", the witness replied, "Yes, but we have Russian Bolsheviki, you know," and when asked if she did not know that Russia was on the side of the Allies and that she knew that Mrs. Warner came from Russia, she replied, "Yes, but as I said before, we have Russian Bolshevikis the same as we have them in America."

"Q. What do you understand is a Bolsheviki? A. A traitor to the country, talking about it. Wouldn't you call her a Bolsheviki, one that talks against America, that's treason?"

Q. I want you to tell me what you understand a Bolsheviki is. A. That is my idea.

Q. You think a Bolsheviki is a traitor to America? A. A traitor to anyone's country, one's own country."

When asked if she had ever eaten in Mrs. Warner's house, or Mrs. Warner in hers, she replied that they had not, although they served lunches after card games, cake or something like that. During the summer of 1921, Mrs. Warner played cards in her house, and she at Mrs. Warner's. She could not fix the latest date they played cards in Mrs. Warner's house. It was after Mrs. Warner made these remarks that she ceased to have anything to do with her. She could not fix the exact date other than October. After October she and Mrs. Warner refused speaking to each

other, Mrs. Warner refusing because the witness
108 said she did not want to have anything to do with her
if that was the kind of remark she was going to make.
She told Mrs. Warner this in the presence of no one, but it
was in her front yard. She could not tell the exact words,
but she told Mrs. Warner that she did not want anyone
around who talked like that, that she, the witness, was a
true American. Mrs. Warner then went back home. She
never spoke about this to anyone, but told her husband
later on. At first she was very fond of Mrs. Warner. The
Warners left Pensacola sometime in March, 1922, as she
recalls. They did not bid them good-bye, not knowing they
were going until just a day or so before they left. After
the incident that she spoke about in the yard when she told
Mrs. Warner she did not want her around any more,
Lieutenant Warner never visited their house, although they
wondered why he did not come. But the witness could see
lots of things since then. She did not feel like inviting the
Lieutenant without his wife. Mrs. Warner never showed
the witness the picture of her dead brother who was lost
in the War, as she recalls, neither did Lieutenant Warner.
Asked with reference to the two Japanese found on the
station concerning which she had testified in direct, the wit-
ness replied that the Japanese were found with pictures
which were forbidden on the station, and they and their
cameras were taken and the gates were closed and extra
guards put on. She remarked that there were still spies
in America taking pictures, and it turned out that they
were. She remarked to Mrs. Warner "Wouldn't it be
terrible with the magazine so close behind us if anybody
should get in there and—a spy or something—and set fire
to that" to which the witness stated Mrs. Warner replied
that "it wouldn't make any difference so long as she wasn't
there." No one else was present at this conversation.
"You must remember there were only three of us on that
street, and we were very—we were not exactly on the sta-
tion. It was the station proper, but there was a brick wall
between the old quarters formerly and the new quarters
that had been taken over." Mrs. Dodd came to see the wit-
ness quite often, Mrs. Dodd having two children. The wit-
ness had no feeling of hostility toward Mrs. Warner, not
a bit. She had no feeling, not a bit, because she was a

Russian, but she felt sorry for her at the first. She did not make a statement to others that Mrs. Warner was ignorant, and made no slurring remarks about her. She knew what

she said and was certain she had not said anything
109 disparaging concerning Mrs. Warner or about Mrs.

Dodd, and had not said Mrs. Dodd was a person of yellow blood, half negro, and never had made such a remark as that about anybody in her life. It was Mrs. Warner that made the remark about Mrs. Dodd, not the witness. It was Mrs. Warner who is now putting words in her mouth, saying what she, Mrs. Warner, had said, and what the witness had not said at all. She had never made a remark about Mrs. Dodd.

Thereupon, to further maintain the issues upon his part joined, defendant called **Robert S. Hollingshead**, who, being first duly sworn, deposed and said, that for the past three years he had been employed at the Bureau of Foreign and Domestic Commerce, Department of Commerce, living then at 3039 Que Street; that for a period of about two years he had lived at 3032 Que Street and was acquainted with Lieutenant Warner practically the whole time since he had lived at 3032. The witness moved into 3032 on the 15th of November, 1923, and for seven or eight months Lieutenant Warner lived in the same apartment house with him. The witness was on the second floor above the Lieutenant and very frequently saw him. He had never seen him at any time when he gave any indication of having been drinking and had never smelt any liquor on him or had seen him staggering. He knew Mrs. Warner and had visited the Warner apartment quite a number of times. He also knew the little baby. The evening before Mrs. Warner left the apartment house, he had dinner with the Warners and saw no evidence of trouble between them. He had never heard Lieutenant Warner abusing or using vile language toward his wife, and had never seen him fly off into a temper. On the night before she left he was in the Warner apartment perhaps two hours and a half. His wife at that time was out of town; there was nothing at all about the dinner party or the dinner which indicated to him that Mr. and Mrs. Warner were not on good terms. He had never seen Mrs. Warner when she gave any evidence of

neglect with reference either to her clothing or food or anything about the house. Quite frequently Lieutenant Warner came to the witness' apartment, on two occasions as he recalled, only, did he come alone. On one occasion he recalls Mr. Warner had come up to his apartment either before or after dinner and spent the evening with him. The witness' wife was away, and he and Lieutenant Warner were spending quite a good deal of time together, and on this occasion the Lieutenant put in practically the whole
110 evening up there, until perhaps 10:30. During that time he went down to see how his baby was, two or three times. About 10:30 Mrs. Warner returned and came up to the witness' apartment for Mr. Warner, and rapped on the door. He answered it and called Mr. Warner. Mrs. Warner spoke rather sharply to the defendant at the time about his neglecting the baby and leaving her. About a month later she left Lieutenant Warner. The witness never saw any liquor in Mr. Warner's apartment and never was offered a drink in there and never saw Lieutenant Warner taking a drink anywhere. Upon cross-examination the witness testified he did not drink but very rarely, perhaps once in six months. He had no liquor in his home, and never saw Lieutenant Warner take a drink, or in a condition when he thought he had been drinking. He did not know whether Lieutenant Warner took a drink or not. He did not remember of ever going to the Warner apartment and asking for Lieutenant Warner when Mrs. Warner would reply that he was out. He would say that he was a very good friend of Lieutenant Warner's, and when asked whether he liked Mrs. Warner, stated his feelings were mutual. He never knew there was any trouble between the Warners until the evening she left, when Mr. Warner told him about it. Lieutenant never told him that he had struck her. When asked what Lieutenant Warner's explanation as to his wife's leaving him was, the witness replied that he could not tell, but that shortly after Mrs. Warner left, Lieutenant spent quite a lot of time at his apartment; in the course of that the conversation went into personal relations to some extent. As the witness recalled, a good deal of the trouble was caused by disagreements over financial affairs; that apparently there wasn't enough to satisfy all her demands; that she wanted more money than she was getting.

Lieutenant Warner did not tell the witness that he told his wife to get out. The witness did not know a man by the name of Hanna, and Lieutenant had never told him that he went to see Mr. and Mrs. Hanna to get Mrs. Warner to come back. He never said that he got on his knees to Mr. Hanna and promised to behave and begged his wife to come back, and never said that he had promised never to mistreat her again, and that thereupon the two reestablished the home. Witness never talked with Mrs. Warner about their trouble. Sometimes toward the latter part of March, Mr. Warner left the apartment house, but stayed possibly six weeks after his wife left; he did not move his furniture out quickly from the apartment after her departure; from time to time after Lieutenant Warner left the apartment the witness saw him, as Lieutenant Warner went to live in a boarding house somewhere in town. Upon the occasion he mentioned that Mr. Warner left the apartment in order to see his baby on two or three occasions while he was spending the evening with the witness; the witness did not go with Lieutenant, but when Lieutenant left the apartment he stated he would go down to see the baby. Mrs. Warner came in about half past ten, and the witness was under the impression at the time that the words Mrs. Warner used toward Mr. Warner would be very appropriate in reprimanding a servant who had been negligent in duty, she saying something to the effect that she was glad she had caught him, that he had left the apartment; had gone away and left the baby, that she thought it was wrong or something of that kind. He said nothing, but joined her and went to their apartment.

Thereupon to further maintain the issues upon his part joined the defendant called **Thomas Bailey**, who, being first duly sworn deposed and said, that at the time he was working for a real estate man by the name of Mr. Harris, in Anacostia; that he was a janitor at 3032 Que Street, when B. F. Saul & Company managed the building, for about three months, from January 1924 to the last of March. He knew Lieutenant and Mrs. Warner when they had the first apartment on the first floor. He did not live in the apartment house, but would get there in the morn-

ing about five or half past five to build the fires. He had a boy there but instead of entrusting the boy to the whole thing he would go up early in the morning to see if he had been there or not, getting there between five and half past five. Lieutenant Warner's apartment was located, with reference to the stairs going down to the boiler room, "right on the right" as one came up the steps. He met Mrs. Warner at her apartment there. When asked if at any time he had heard anything going on in the Warner apartment, he replied that he had heard some loud talking from Mrs. Warner, and the use of abusive language of all kinds; when he heard Mrs. Warner's loud talking he would not hear Lieutenant Warner; he had never heard him; she was using abusive language towards him; very bad language that he could not explain in the court room. When told to go ahead, he said he heard her say, damn you, damned liar; go to hell you s. of a b.; and f— you, and again f— you, I'll go to hell first, damn you. He

112 heard her say these words on several occasions. It was usually in the morning when he heard them. Lieutenant Warner left the apartment March, 1924. Mrs. Warner he had not seen since. Thereupon upon cross-examination the witness testified that he had worked in the apartment from January to the last of March, 1924. The apartment sold out and changed hands, and of course he didn't stay there any longer. He had another apartment down on 17th Street. He was a married man. His wife was not living there at the time. He was not living with his wife in Anacostia. He was living at 1717 T Street in an apartment there he had charge of; not with his wife. He was separated from her. He had heard the Warners quarreling four or five or five or six times. He would be tending to his duties, going down, or up from the cellar, looking after the heat. The Warner's apartment was right on the right as he came up the steps. It was the first apartment on the first floor. When asked if Mrs. Warner was in the apartment at the times that he heard this language, he said that he supposed she was, he heard her voice speaking. The Warners were there when he came there. He thought there were three other tenants in the building; it was a two-story building with five or six apart-

ments; it was a three-story building with three apartments on the first floor, making nine apartments in all. The witness could not remember just exactly how many apartments were in the building as it was so long since he had been there. The witness did not go to each apartment to remove the garbage, but removed the same from the outside. He had been in the Warner apartment twice. On one occasion Mrs. Warner was there but Mr. Warner was not. When he heard this bad language he was right on the outside of the door as he came up the steps, the door leading to the hallway as they go into their apartment; the door was closed and he stopped to listen because he was the janitor there and the building was entrusted to his care, and if he heard anything wrong going around there on the rounds he had to let them know. He was sure it was Mrs. Warner's voice that he heard; that he could not be mistaken about it. He did not hear Lieutenant Warner say a word, and he did not know if Lieutenant Warner was in there or not; had no way of knowing to whom the remarks were addressed; he was just coming up the steps from the engine room which was in the front part of the building, and was just landing up on the last landing. He knows it was Mrs. Warner's voice using the bad language

because he knew her voice; that she had a foreign
113 accent to her voice. The first time he ever mentioned to Mr. Warner having heard Mrs. Warner use this language was pretty nearly a year after it occurred, but he told it immediately to Mr. Cox, at Mr. Saul's office. Mr. Cox is one of the clerks at B. F. Saul & Company; his name is Earle F. Cox; when he went to that office he told Mr. Cox about Mrs. Warner using the language; the way he told Mr. Warner about it was that Mr. Warner found him and asked him if he ever heard his wife using bad language about there; that was about a year afterwards that Mr. Warner came to his house and asked him about it.

Thereupon, to further maintain the issues upon his part joined, defendant called to the stand **Missouri Jackson**, who, being first duly sworn, deposed and said, that she was employed as a servant doing day's work at the time; that at one time she worked for Lieutenant and Mrs. War-

ner in January, 1924; she went to work the 1st or 2nd of January and stayed three weeks doing the cooking and nursing and caring for the baby; she saw Mrs. Warner in the house; when the witness first went to work Mrs. Warner was away for the first week; she thought Mrs. Warner left the same day she came; she stayed away about a week; while she was there she took care of the baby and continued to take care of it as long as she stayed there, cooking for it, washing it, cleaning it, and caring for it generally. There was always plenty of good in the house, and for the baby lamb broth, plenty of chicken, plenty of milk; she did not notice that the baby was neglected in any way; the baby had plenty clothes; she knew this because she did its wash; she cared for the baby, washed it, dried it, dressed it, undressed it at night, and put it to bed before she left about eight o'clock.

Q. "Did you notice how Mrs. Warner was dressed? Did she have any clothes or anything like that? A. Well, mister, I want to tell you the truth, see. So far as I know, see, I wasn't there long. When Mrs. Warner went out she looked dressed as nice as any other madam I worked for. I didn't see no difference."

Mrs. Warner had an automobile which she used to drive and Mr. Warner used to drive. Mrs. Warner drove it there for her when she went to work, and she and Mrs. Warner used to go out in it. She had never seen Mr. Warner mad,

114 he always seemed pleasant; while she was there she never heard him swear; he paid her; she never saw

Lieutenant Warner drunk; never saw any liquor around the house; never saw Lieutenant Warner when he looked as though he had been drinking; never smelt liquor on him. Around the house he was as pleasant as any other man she ever worked for; she didn't see anything wrong with him.

Thereupon upon cross-examination the witness testified that she worked for the Warners for approximately three weeks, from around the first day of January. Mrs. Warner left the same night that she came there and was gone about a week; she did not know why she left, but said she was going on a trip; seemed to be perfectly pleasant. Witness

did not live at the Warners nights, but tried to get there in the morning about seven o'clock and stay until about eight o'clock at night, doing the cooking and looking after the baby. While Mrs. Warner was away for that week the baby was left right at the house. Mr. Warner would come home every day for lunch and would come home every night. She did not know Mr. and Mrs. Hanna. Never met them. Mrs. Warner told her on the occasion that she left she was going out for a trip; she did not hear Mr. Warner say anything; they seemed to be pleasant when she was getting ready to go; "she didn't hear nothing." She heard no trouble between them.

"Q. Why did you leave the house? Do you know? A. No. Mrs. Warner just told me she didn't need no help no longer, and she paid me and I left."

Thereupon the defendant further to maintain the issues upon his part joined called **Henry E. Warner**, who, being first duly sworn, testified that he was the father of the defendant, and was Deputy Examiner of Titles of the Attorney General of the State of New York. Thereupon the witness was shown a paper and asked if he could identify the same, to which he replied that he could, and did; that it was in his handwriting, all of it; that just before he wrote the same he received a telegram, a correct copy of which he made and kept, and which he enclosed with the letter he had just identified; that he had an independent recollection of the telegram which the plaintiff had testified she had sent to him in the spring of 1922. The witness thereupon testified that he had received a telegram from the plaintiff in this action, in which she desired to have him
115 have Paul, his son, give her money to go North as she was ill. That was the substance of the telegram, of which he made a copy and sent to his son. The copy was in pencil, dated February 19, 1922.

On cross-examination the witness was asked if he had ever been in the home of his son and daughter-in-law, to which he replied that he had been about July 4, 1922, for three days, Saturday, Sunday and Monday. This was in Washington but he could not remember the place where they lived at the time.

Whereupon to further maintain the issues upon his part joined the defendant called **Daniel Foley**, who, being first duly sworn deposed and said, that he was a member of the Metropolitan Police Department, and assigned to duty at the Traffic Bureau, where he had been for five years; that he resided at 1838 Ingleside Terrace, N. W., having lived there 13 or 14 years; that he knew both Lieutenant and Mrs. Warner; that at one time Mr. Warner moved into his home, occupying the second floor, which was an apartment; that the witness resided there with his family. Lieutenant Warner came the fore part of October, 1922, and stayed there until the following spring, along about March or April; during this period he would see Lieutenant Warner several times every day; he never saw Lieutenant Warner when he was drunk, or gave any indication of having been drinking; he never saw him take a drink of intoxicating liquor or smelled his breath when it seemed he had been drinking; he always appeared to be a perfect gentleman around the home, and very kindly toward Mrs. Warner; never heard him use any abusive language, or swear or curse; about the time Lieutenant Warner came to his place, the baby was born. From the time Mrs. Warner moved into the house until she left the witness saw her pretty nearly every day. He never saw any evidence about her of being neglected in regard to her clothes, and she always appeared very neat all the time. While they lived at the witness' house, "all was peace and pleasantness as far as I know."

Upon cross-examination the witness testified that the Warners lived five or six months in the witness' home, coming there about October 1922 and leaving March or April, 1923; the witness generally works day time, every day; at the time the Warners lived with him he worked part of the time from eight until five, and part of the time, from eight till four, sometimes working at night, the night hours being from four until twelve. The witness occupied the first and
third floors in his home, and the Warners the second,
116 having three rooms; they seemed to be very affable
and very kind to each other as far as the witness
knew, and he thought a great deal of them; he knew of there
being no trouble between them during those six months; no
bad language was used by either towards the other; they
had a servant there now and then, whose name he did not

remember, and he could not say how long the servant was there; he never knew Lieutenant Warner taking a drink of intoxicating liquor, and never saw him under the influence of liquor in any way; he never gave him a drink of intoxicating liquor; he did not bring liquor from New York.

On re-direct examination the witness testified that at that time he had four young children living with him.

Thereupon to further maintain the issues upon his part joined, the defendant called **Kneffler McGuinness**, who, being first duly sworn, testified that he was a Lieutenant acquainted with Lieutenant Warner; that on September 29, 1923, he rode with Lieutenant Warner to Annapolis, leaving Washington about 10:45 in the morning from the Army and Navy Club, getting to Annapolis a little before noon. They were there to attend to some business at the bank and get tickets for the Army and Navy game, the witness procuring the tickets for Lieutenant Warner who had asked him for two. After making arrangements for the tickets they had lunch and went to see Commander McCandless from whom they procured the tickets, and left Annapolis about 7:30; they saw a foot-ball game which was over about 5:30 or 5:45; they then had something to eat and started back, probably as late as 7:30; they arrived in Washington after eight; Lieutenant Warner drove the car; it was his car they went down in. Immediately on arriving at the Army and Navy Club in Washington Warner let him out and he went on. During that day they had nothing to drink at all.

On cross-examination the witness testified that this occurred the 29th of September, 1923; he had not been to other games with Lieutenant Warner; that was the only time that he ever went to a game with him; he remembers the date so well because at the time he made a note of it; wrote down a memorandum in regard to it, in his desk here in Washington because Lieutenant Warner asked him to make a memorandum, not on that day, but probably two or three months later. Lieutenant — did not tell him why he

117 asked for the memorandum; it was in the shape of an affidavit. When asked if he had ever seen Lieutenant Warner take a drink he stated that he had been associated with him since 1920, from the period of May, 1920,

until November at Pensacola, and from May, 1922 until he was detached from the Bureau of Aeronautics, December, 1924; during all that time he never saw him take a drink of liquor; he had never seen Lieutenant Warner when he thought he had been drinking nor detect the odor of liquor on his breath; on the occasion before mentioned he left Annapolis with Lieutenant Warner a little after seven and arrived in Washington about 8:15; witness thought it was about forty miles to Annapolis. Lieutenant Warner drove the car all the way both going and coming; they parted at the Army and Navy Club at about eight o'clock or a little after he thought; the witness did not know where Lieutenant Warner went.

Whereupon to further maintain the issues upon his part joined, defendant called **William B. Childs**, who, being first duly sworn, testified that he lived at 1109 14th Street, N. W., and was employed at the Navy Department where he had worked since November 4, 1922; that he was very well acquainted with Lieutenant Warner, having known him since November 4, 1922, in the Navy Department; he very distinctly recalled when Lieutenant Warner worked there; the witness' desk was in another room entirely but Lieutenant Warner used to see him every day. He would either be at the witness' place or the witness at his. The witness had never visited Lieutenant Warner at his home; the work which Lieutenant Warner did at the Department was technical work; "very careful technical work;" the witness had never seen him intoxicated or never heard of his having been drinking, and had never smelled the odor of liquor on his breath; he was at work every day.

On cross-examination the witness testified that Lieutenant Warner did not drink as far as he knew; the witness had not seen him after office hours.

Whereupon to further maintain the issues upon his part joined, the defendant called **William C. Frisbie**, who, being first duly sworn testified that he resided at 3800 14th Street, N. W., and was employed in the Bureau of Aeronautics, Navy Department, having worked there since November, 1921; that he had known Lieutenant Warner ever since he came to the Bureau, and would see him every day; his desk

was right in the next room, an open door in between, and Lieutenant Warner was usually in there two or three times a day on business; he never saw him when he was
118 drunk or looked as though he had been drunk; he never smelled the odor of liquor on him and never saw him take a drink; never saw him at any time when there was anything about him that gave any evidence that he was addicted to the use of intoxicants or intoxicating liquors; never saw him in the office when he was under the influence of intoxicating liquor; the witness used to see Lieutenant Warner in his office every day; his work was Aerodynamics.

On cross-examination the witness testified that Lieutenant Warner usually left the Department at the usual time, at 4:30, when everybody else did, officers and civilians; sometimes there were occasions when he was excused the same as the rest of them, earlier; he did not see the Lieutenant after 4:30, but occasionally had ridden half way home with him, but as a general rule after work Lieutenant Warner went home and he would not see him any more in the afternoon; the witness had been out with him on two nights, could not tell how long ago, probably two years; the witness was married, but did not visit the Warner home.

Thereupon to further maintain the issues upon his part joined, the defendant called **Lieutenant Walter D. Diehl**, who, being first duly sworn deposed and said that he resided at 1725 Lanier Place and was acquainted with Lieutenant Warner, having first met him when he came to the Bureau of Aeronautics; the witness had been with that Bureau since it was organized in September, 1921, and worked in Aerodynamics; his desk was only four feet away from Lieutenant Warner's; he never saw Lieutenant Warner when he was drunk; had never seen him take a drink; never smelled liquor on him, and Lieutenant Warner was always at work every day. On cross-examination the witness testified that Lieutenant Warner was at the Bureau of Aeronautics from approximately May, 1922, until approximately October, 1925; on several occasions Lieutenant came out to the witness' house; the only occasion he could remember was the night of the Dempsey-Firpo fight; the witness never saw him drink at work or any time to take a drink.

The Court: We might as well shorten the agony, I don't believe he did get drunk. I will let you know that now.

119 The defendant, called as witness in his own behalf, testified substantially as follows:

Is at present with the V. T. Squadron, Air Craft Squadron Atlantic Fleet, attached to the Flag Ship U. S. S. Reed. At present on sea duty. He has been in the Navy since the 14th of December, 1917, graduating from Massachusetts Institute of Technology in June, 1913. He met his wife first in January, 1918, in Boston, through a mutual friend and paid court to her from then till the time of his marriage. After meeting the plaintiff he remained in Boston till the latter part of January, 1919, when he was assigned to duty at the Naval Air Station, Key West, Florida. They corresponded with each other and there came a time when he received a telegram that the plaintiff was dying, and in accordance with that, he sent a number of telegrams (that have been received in evidence) on the way north and left immediately. He was very much in love with the plaintiff, whom he married on the 11th of October, 1920, at St. Lawrence Church, in Brookline, Massachusetts. He left Pensacola in the latter part of September for the purpose of getting married, having ten days' leave, plus traveling time and received a five day extension. His wife did not return with him to Pensacola, she arriving about two weeks later. On her arrival, quarters were ready for her at the North Hill apartments, where they lived from the latter part of October, 1920, until March or April, 1921. They moved to the Naval Air Station about the first of June, 1921, having Dr. and Mrs. King as neighbors on the right hand side. Their period of life there was comparatively happy. He recalls the occasion when the plaintiff went to Boston while they were living at the North Hill apartments in Pensacola, in April, 1921. His explanation of how she came to go to Boston was that she was pregnant and had had several doctors attend her in Pensacola, but she had no use for the local doctors' ability and she wanted to go to Boston to receive proper medical attention and he was notified that they were to be assigned quarters at the Air Station, which would be ready about June 1st, and he was studying for his examination for transfer to the regular Navy, and plaintiff

said defendant could study better at the Air Station at Officers' Quarters than at home and plaintiff wanted to see people at Boston, whom she knew and he had met. He knew absolutely nothing about any abortion and she did not talk

to him about it. He did not give her \$400, nor refer
120 her to a doctor named Humphrie. Witness knows

Dr. Reddit, the plaintiff also knew the doctor and his wife, whom she met in New Orleans in 1921. Dr. Reddit was an oculist, and defendant assumed that plaintiff knew this. Defendant knew Dr. Barry, a school friend, now in practice in Long Island City, had known him most all of his life and had kept in touch with him from his school days, and witness assumes his wife knew that. He did not, however, tell his wife that he would send her to Reddit, or to Dr. Barry, to have an abortion performed. Witness did not know Dr. Gunther and had never heard his name until it was testified to in the Court room. The first time the witness ever heard of the abortion was about a year ago. The witness did absolutely want a baby, loving children very much, as his wife absolutely knew. When the plaintiff returned from Boston she did not tell him of having seen Dr. Gunther. There came a time when she complained to him about having pains and he got in touch with Dr. King, who lived next door, who is the same man who testified today. There finally came a time when she was taken to the Sisters' Hospital. He employed a Dr. Payne for her. She was in the hospital four or five days. Witness thought she simply had a miscarriage at that time. The wife explaining to him that in Russia it is apparently a disgrace to have a miscarriage, and in the early days of her pregnancy she did not want him to say anything to his people about it. There was absolutely nothing at all that the witness did, either by way of advice or procurement which caused the plaintiff to have an abortion, if she did have one. They lived at the Naval Air Station about ten months. He was Aide to the Commandant there for about three years and had access to the confidential files and was on duty every day, except when he had authorized leave. While there, the wife would very often call him on the phone and come to the office and wait until he "came through" with whatever money she asked for. He was making about \$420 a month. He never refused to provide food or clothing for her down there. They had a servant the entire time they were there. He bought an

automobile for her, paying \$1,800. and it was the best car in the station at that time. He described the plaintiff's attitude to finances by saying apparently that he was not making as much money as would suit her. He sold his Liberty Bonds to give her the money she wanted. He had about \$500 worth when they were married. He was apparently

never able to give her enough money. He recalls
121 when she became pregnant later, about the first of January, 1922, there came a time when she insisted on him giving her money to go North once more. He got the copy of the telegram from his father, the wife having wired the father without his knowledge, requesting the father to force him to give her money to go North. He knew at that time that the Navy Department had requested that he be transferred to the Bureau of Aeronautics, Washington, District of Columbia, in the Department of Aeronautics. The attitude of his wife with reference to money, when he said he did not have any to give her at that time was that she said that either he was spending it, or saving it without her knowledge, or sending it to his people. She would become very angry with him and indeed abusive very often—he could not say the number of times. When asked if the wife said anything about leaving him, because he did not have money enough for her he said “Yes, she held that over me practically all of my married life.” Defendant's cross-exhibit for identification, was identified by the witness as being entirely in the handwriting of the plaintiff. Defendant never called plaintiff anything but “Janet,” she probably told him her name was Janet when he asked her her first name, although later she said it was not her official name. It was the kind of name that she was known by and to him she was known as Janet during their entire married life. In letters she always signed herself as Janet, and never as anything else. The paper above referred to as defendant's cross-exhibit for identification, was then received in evidence as defendant's exhibit No. 15. On the 17th of March, the parties were living in the North Hill Apartments in Pensacola. Said exhibit 15 was read to the witness and he was asked if he recalled the circumstances under which it was written, but he did not, nor did he recall how the paper happened to be found. His wife left him in March, 1922. When asked if he remembered what caused her to leave, he said her apparent dislike for him was get-

ting stronger and she wanted to go North. He wanted to be detached a month and had just bought a new car and had no money to give her. Her feeling toward him became more marked, and she thought by acting that way she could get more money out of him. At the time she said she could go to court and get \$150 per month and any Judge would take her word. He had never laid hands on the plaintiff, as the plaintiff well knows. He never struck her; he didn't
122 know that Doctor Payne came to his home and put a plaster on his wife's back.

When he met the plaintiff in Mr. Hoffman's office, she demanded \$150 per month to be paid by him to her for his alleged mistreatment. The final result of it was that he was very much in love with his wife when he married her and had not gotten over it. He made every effort to get her back and she finally came back, but he could not be sure whether he gave her anything at the time. When they left Mr. Hoffman's office, they went to a cafe and had a "get together" dinner. Then they went back to the Naval Air Station and a month later he was detached. They drove to Washington and went to live at 1919 19th Street. At that time they got along together very well. The change brought on a miracle. They lived at 1919 19th Street till the first of October, 1922, when they moved to Foley's place on Ingleside Terrace. The wife was pregnant then and he endeavored to find the best doctor in the city to take care of her and secured Dr. Sinclair Bowen. He attended her several times prior to the birth, which occurred at Garfield Hospital, October 1, 1922. At 1919 19th Street they had a furnished apartment, two rooms, sun parlor, kitchen and bath. While she was at the hospital he found other quarters at Ingleside Terrace, at Foley's where they remained about five months, during which time they got along very well. He recalls the time she left the Foley house. He absolutely did not compel her to go out. He didn't take her away from the hospital because of the expense. He explained how she happened to leave the hospital by saying she had been there nine days and was getting tired. She asked Dr. Bowen if she could leave. The doctor said "Yes, if she was careful." Witness had a closed automobile and an umbrella and he took her and the baby to the new home which he had leased at half past five or six o'clock. The

plaintiff immediately wanted to go out and get something to eat. The defendant and Mr. Foley both protested against her going out under the circumstances, but plaintiff insisted, and said in her country women are up and around in two or three days after delivering their children, and only American women took nine days. He accompanied her to a restaurant and they got something to eat. While they were at 1919 19th Street and at Foley's there was no particular difficulty between them. They came to live on Sixteenth Street about the first of March, 1923. While there, 123 he visited his people in August, but his wife didn't and would not go with him. He had not seen his people since he was married. He drove up in the machine. His parents invited his wife to spend the Summer with them and bring the baby to a camp in the Adirondacks, but she refused to go. When he came back, about the first of September, 1923, he noticed a change in his wife. On September 29th, 1923, he had been to Annapolis with Lieutenant McGuiness. His wife wanted to see the Army and Navy game in New York and he told her that he would take her if he could get tickets. He did not belong to the Athletic Association and went to Annapolis with Lieutenant McGuiness to get the tickets and attended a game. They left for Annapolis about eleven and arrived just before noon. He attended a football game there about two or three in the afternoon, had something to eat and then came back. He let McGuiness out of the machine at the Army and Navy Club and went directly home. When he got there his wife was not there, but came in shortly afterwards. When she came in she became very abusive and did not like it because he had attended the ball game at Annapolis instead of coming home at four in the afternoon. He returned at 8:30. She knew that only McGuiness could get the tickets, and he got them to please her, so she could go to New York. She upbraided him, called him names and told him to get the hell out of there, to go to hell and all that sort of thing. He went to the kitchen window to stop the noise and she came after him. He tried to defend himself. He got hold of her and held her, which enraged her very much. She then went out in the hall and called the elevator girl or janitor. The janitor, who testified previously, came up. He had been in the apartment only once. When the janitor

said the defendant was beating the plaintiff the defendant said he was not, and told the janitor to get out. It was none of his business and he didn't want him around. Plaintiff insisted that he was beating her and told the janitor to call the policeman. Defendant said he was not beating her. He knew it was apparently a frame-up on the plaintiff's part, to make it appear that he had attacked her, while all that he did was to try to protect himself, and he held her wrists. The janitor was Bunn Kelley. Defendant finally took his wife out that night to quiet her down; she was very excited and said she was hungry and thirsty. They drove out Wisconsin Avenue, stopped in a delicatessen store and got a cup of coffee, and then stopped in a restaurant
124 down town and she had something to eat and they drove back to the apartment later in the evening. He went in the apartment but did not stay that night, going to the Fairmont Inn, on 14th Street, where Mr. Willicombe was clerk. Arriving there about one o'clock. He never again lived in that apartment house, because his wife had disgraced him and made it appear that he had beat her up, which she knew was not true. He had never layed hands on her and under these circumstances would not live at that apartment again. He told her that if she wanted to live with him she would have to live in some other apartment. A month later they did go to live at 3032 Q Street, about the first of November, 1923. While they were living apart he supplied her and the baby with money and food and all that, and paid the rent, and saw her practically every day. They were living in the Que Street apartment in March, 1922, when she left. They had a servant there, part of the time, practically all of the time. Referring to the period beginning 1st of January, 1924, he said there was never a time he did not supply the woman with food. She could go to the commissary at any time, and the bills show she had ample food. There was never a time that he refused to give her money when he had it. At that time he was very much in debt and his wife knew it. He would show her his canceled checks at the end of the month and she would not believe him and he told her she could go to the bank and the bank would tell her. She said he was either spending the money without her knowledge, or sending it to his people, or doing something else with it. The plaintiff knew

well that he could not spend the money without her knowing it, because he was there from 4:30 in the afternoon till 8:30 in the morning, in her presence every night. He paid the servant, house rent, and market always and the laundry she perhaps paid. He took care of the general household expenses. He also gave her the checks offered in evidence. The plaintiff went to Boston about the 2nd of January, 1924, and stayed about a week; going simply to visit the people she knew in Boston. She came back about the 9th of January. Their servant at that time was Missouri Jackson and after Missouri Jackson the servant was Ontronette Hawkins, and she was there at the time Mrs. Warner left, and went with Mrs. Warner. Referring to the time they were in the apartment 3032 Que Street, he never beat her, or pulled her hair, or pulled her up by her hair, or struck her, or dragged her around the apartment, or anything like
125 that. He had never layed hands on the plaintiff, but she used to defy him and say that if he did she would have him taken to the police court.

During this time and prior his wife had used abusive language to him, which was getting worse. It was very vile and terrible. The last month or two he jotted down in her presence and showed her what she was saying. The witness identified a number of papers and referred to them. Witness stated plaintiff would say that it was his handwriting and no one would believe it. He had no proof and no witnesses. He identified the paper which had been marked "defendant's exhibit cross 2 for identification" and said it was written under these circumstances. Defendant was writing these cards and the plaintiff said she would write some things and the defendant could say what he liked about it. What she read to him was what is contained in defendant's exhibit cross 2 for identification. Examining a number of memoranda, witness identified them as in his handwriting, said they are on cards. When plaintiff would cuss and swear at him he would pull a card, or envelope, out of his pocket and write down in her presence absolutely what was said. Witness never called plaintiff names such as written by her on a yellow piece of paper for the Court on her direct examination, but remonstrated with her for using such language, saying God would punish her for talk-

ing like that, having a young baby like that. She talked about his mother, and father and sister. Memorandum dated February 28, 1924, is a sample of the many cards shown as consisting of three sheets and will be found in the appendix. There were twenty-eight like memoranda collectively received as defendant's exhibit 16. Defendant had letters in which the wife signed her name "Janet." A great many of them, in fact, all of them were signed that way before they were married. Two of them were identified as well as the envelope and were marked respectively "defendant's exhibits 17 and 18," and will be found in the appendix. During January, February and March 1924 the defendant paid all of the household bills, the meat bill, the grocery bill, the commissary, the rent, the electric light, the gas, and the telephone. The witness was handed checks and identified them as being for household expenses in January, which checks were received in evidence as one exhibit and marked "defendant's exhibit 19" and will be found in the appendix. Defendant was in debt at the time. He took care of Mrs. Warner's bills and never refused to buy clothes for her. She had an account at Woodward & Lothrop's. After she left him, she bought a hand bag, and he identified a Woodward & Lothrop bill and a bill for \$12.90 for a lady's hand bag from A. K. Kenn Co., military tailor and equipment department. She purchased two bags in four months. She also purchased night dresses and underwear in March after she left him, from Louis Gold, and he identified the bill dated March 6th. Also a bill of a Dr. Scott for treatment of the plaintiff's eyes in the sum of \$94.00. Witness denied that he ever told anybody at any time at the commissary not to supply the plaintiff with food. He denied that on the night before his wife left him in 1924 he told her to get out, that he would not support her any more. He did not know that she was going until after she had left. The day she left he came home at noon and the wife made out a list of things to be gotten at the Naval Dispensary and food for the evening meal to be gotten at the commissary. He purchased the food but did not know whether he or she pur-

chased it for the evening meal the day before. They had Mr. Hollingshead for dinner the night before she left, being the same Mr. Hollingshead that appeared as a witness at this trial. The wife left him in March 12, 1924. Witness identified several commissary slips and said that they were slips that he got at her request, or represented purchases for the evening meal. He got them about five o'clock in the afternoon, after his work. Lieutenant McMurrain was with him, being the same Lieutenant McMurrain whose deposition was read in this case. He brought these purchases to the apartment. He had waited at the Navy Department for her to come with the car at 4:30, as she had promised, and he waited until five o'clock. Lieutenant McMurrain took him to the Commissary on his way home in McMurrain's car. The slips identified were thereupon received in evidence as defendant exhibit 24, and showed purchases for \$1.16, fruit and vegetables 30¢, subsistence consisting of bread and socials teas, tomatoes, etc., \$2.49. Witness was shown certain commissary slips and said they were all March bills, except three; two for April and one undated. Three of the slips were unsigned, the others were unsigned, the others were received in evidence as defendant's exhibit 25. When the defendant came home on the night of March 12th, Nettie Hawkins was in the house. He saw his wife about ten o'clock. The same Mr. Willicombe whose deposition was read was with him. The wife came in and was abusive. He did not have a lot of papers out of the trunk and on the floor at the time. Nor did he pick

up three of the letters which have been shown here.

127 He recalls the exhibit in the wife's handwriting, wherein it was written that they had been divorced and started the New Year right. This exhibit he found in the book case after the wife left. She did not remain in the house more than twenty minutes that night and he does not recall that she said anything about money that night. The next morning the wife said something about her wanting money and he said that she would get more money if she would bring the baby back. She came back the next morning about eight o'clock, at which time he was in the apartment shaving. Nettie Hawkins was preparing his breakfast. The wife wanted \$100 and he told her that he

would give her \$100, if she would bring the baby back and come back herself before six o'clock that evening. He later in the day gave her \$100. He had no money in the bank and was compelled to go to the Navy Department and get \$100 as advance on his salary and she came there and he drove to the Riggs Bank at Dupont Circle and had the check cashed. At the bank she refused to let him in the car, but she got in, slammed the door and drove away and he went back to work in the street car or a taxi. That was the last he saw of her. He kept the apartment open for her about one month, until after she filed the bill against him. He never saw her at the apartment again, but noticed things had disappeared and saw evidences of her having been there. Various articles of furniture, all of the silverware and bed clothing was taken away. The baby's crib was taken on the truck, the day she left, as was the new trunk she had bought in December. He did not have the key of that trunk which was kept locked all of the time. She had two trunks and kept both locked and refused to let him have access to the trunks at any time. The plaintiff had always during their married life made demands on him for money and when these demands were made he sold Liberty Bonds, and when he had collateral he borrowed money and he drew on his pay in advance to get her money. This happened more often than seldom, and practically all of the time during the last few months they were in Washington. She went to Boston on the 3rd of January, 1924 and returned on the 9th. She left about the 19th of January for three or four days. He did not know she was going, she did not tell him; she did, however, tell him she would divorce him, but did not say when or where. She kept saying that all of them time. On the morning of the day she left she refused to have breakfast with him. The baby would see him to work, but plaintiff would not be up. This particular morning he had to go to the bed

128 room to get something and the plaintiff became very incensed, because he had disturbed her. That afternoon she left. He sought her and asked her return, finding her at Hanna's. They did not apparently know where she was, but later learned that she was living with a hair-dresser and they desired a reconciliation and got the plain-

tiff to their home on Seventh Street, and he went there. She demanded, in order to come back, that he give her a platinum wrist watch and two thousand dollars in Liberty Bonds, which he had owned at the time he married. All of which he promised her on condition that she would return and be a good wife. She came back after she left him on the 12th of March. He again offered to take her back. Certain slips marked defendant's exhibit 26 were received in evidence after having been identified. Witness recalled the second affidavit of Nettie Hawkins that was offered in evidence and was present in Mr. Leahy's office when it was exhibited and knows that Nettie Hawkins was in the room when it was dictated and it was impressed on her that she should read over every page of it. Witness has read the affidavit and there is nothing in it that Nettie Hawkins did not tell. Her story was not changed in any way. He was not present when the first one was made.

He paid Mr. Connelly a fee of \$25.00.

129 Defendant stated that he knew his wife's name was Natalie A. Warner and there was no doubt about it. He was sure of the wedding ring and identified the initials, N. A. K., saying "It looks like N. A. K." which were the initials of his wife. They were married October 11, 1920. At the time of his marriage he was stationed at Pensacola and his wife went there about two weeks after the wedding and they lived happily until about the time they moved to the air station. The trouble started about June 1, 1921 and apparently the defendant was not making money enough to suit Mrs. Warner. She would come to his office and demand money and stand outside until he came out, and she would wait until he could get the money, and it would embarrass him. But he never struck her. When asked how he knew his wife was going to the lawyer, Mr. Hoffman's office, he said "Well, she left me at that time. I do not recall just how I learned that she was going to the lawyer's office." He followed her later but did not know where she was going. He wanted to make up with her. He did not want to make trouble. He knew that she was going to divorce him, or attempt to divorce him but did not know how she knew she was going to divorce him. He reached the lawyer's office a few minutes after her and

went in to the private office of Mr. Hoffman. He did not recollect her referring to the bruise on her arm or on her face. When asked what he meant by saying he did not recollect these he said: "I meant that stronger—she had no bruises on her." He did not recollect the question of bruises coming up during the interview at the lawyer's and was certain that any bruises on Mrs. Warner had not been caused by him and he never at any time put his hand on her and as far as he knew he absolutely did not have any bruises. He had not had any fights with her. He asked her to come back and live with him. Her reason for leaving was that she apparently did not want him, and he wanted it understood that he had no desire to have his home broken up. It was his wife's fault entirely, absolutely. He had done nothing to provoke her. She left him voluntarily and without absolutely any reason. He did not tell Mr. Hoffman that his wife would take him back if he would do the right thing, nothing like that. He certainly told Mr. Hoffman that he was very much in love with his wife and did

not want his home broken up and did want her back
130 and told her so. He made no promises at all. They lived together until January, 1924, with the exception of one month while they were living on 16th Street. When they had that trouble in January, 1924 they were living at 3032 Que St., Washington, D. C. She left him then without cause. His striking her was not the cause of her leaving him while they were living at 1915 16th Street. He heard Bunn Kelly, the janitor at that time. The janitor did come up to his apartment on one occasion on the 29th of September, but did not come up twice. He thought the door was open and Mrs. Warner was out in the hall. His wife had screamed through no cause on his part. He was preventing her from striking him. She had certainly attempted to strike him. She expected him home that afternoon. He did not arrive until about 8:30 in the evening. She had gone out because he stayed out and had attended a football game with Lieut. McGuinness and when he got in she was not home but came in ten or fifteen minutes later and flew into a rage, called him vile names and told him to get the hell out of there—that kind of language. She came toward him with her hands out and started to strike him. She had not screamed before that. She did

strike him one or two times before he had an opportunity to prevent it. He did not strike her or attempt to strike her and never struck her in his life. He was not in the habit of doing that. After Mrs. Warner went out in the hall the janitor came up. He does not know how Kelly got into the apartment. He did not put his foot in the door to keep Kelly out. Mrs. Warner called the janitor and told him he was beating her up and the witness said that was absolutely not true. Kelly himself testified about the first occasion and that is the only occasion. He does not know verbatim what Kelly said but the substance was that he wanted to know what the trouble was. Mrs. Warner said that he was striking her and had not supposed that he told Kelly that his wife was striking him. He did not know whether he did or not but he had too much pride to tell a janitor that. It was impossible for him to give the whole conversation between him and Kelly. Kelly was probably there three or four minutes. He did not tell Lt. Warner there was no resident manager there, and he does not recall his saying he was supposed to go into the apartments when there was trouble in them. He probably did say that Kelly had no business up there and Kelly said there was a
131 police officer down stairs; that he was going to get one. Mrs. Warner asked him to get a police officer and to bring up the one he said was down there, and he may have said something to Mrs. Warner about disgrace, or that sort of thing. Kelly did not tell him that he "would have to cut this out," and to his recollection nothing like that was said, but it is impossible to tell verbatim what happened. He probably told Kelly to get out and stay out—yes, he did tell him that. Kelly stayed. The witness does not recall Kelly saying that he was going to report it to the office. The witness remained in the apartment after that incident possibly an hour, then went out with Mrs. Warner for a drive up to Scott's monument, stopping to get something to eat and then went down town and was down there some little time. He had not been to the boiler apartment before he went to the apartment. Kelly was never in apartment on more than one occasion. From the 16th Street apartment the witness went to the Fairmont on 14th Street. The second separation between them occurred in January, 1924. The Hannas were Mrs. Warner's friends

and he was very much opposed to having anything to do with either Mr. and Mrs. Hanna. On her account, and against his own wishes, he was friendly with them. He never went to the Hanna house and got down on his knees and begged forgiveness. He was at the Hanna house and he tried to locate through them his wife because they were Mrs. Warner's closest friends, and naturally when she disappeared he thought they might know something about where she went, and so he went to them. The witness wants the court to understand that they were close friends of Mrs. Warner's, rather than him. When he went to see Hanna, Hanna met him on Seventh Street and asked him if he knew where his wife was. Hanna replied he did not know where she was, but she was finally located—at least she gave me that place. They knew eventually where she was and his wife met him at the Hanna home and did not want to come back to him. She complained about him and planned on leaving him in December, and it was evident from her actions and her language that she wanted more money. She told that to Mr. Hanna and also the witness. That was absolutely the reason. He did not beg forgiveness except that he said if there was anything wrong and there was any way or shape or manner that he could rectify it that he would be glad to do it. He may have said that he had been negligent in her opinion and that he cer-
132 tainly would be glad to do everything possible that he could to the nth degree to keep things together. He was told by Mr. Hanna that he could get her back for \$200. And the witness had to buy her back, practically. When asked if he did not offer to give Hanna \$50 and Hanna stated that was not enough to pay, and buy what was needed by the family, the witness replied "No, she wanted \$50;" that he wrote out a check, dated in April, because at the time he was upset—he had money in the bank—he must have to make out a check for \$50. The witness was then shown a letter and asked if he could tell when it was written. The witness was then shown a plaintiff's exhibit 1-K, and testified that he wrote the same in January, 1924. He wrote "O please, O please, Jannett, take me back." He was asked what he meant by that. He replied simply this: "I was absolutely disgusted over the fact that my home was broken up. I would do anything, reasonable

or unreasonable, to keep it intact." At the time that the letter was written there had been no row of any kind—she had just been to Boston and returned. He had done nothing to cause her to leave in January. He was further asked if he had written "I will give you everything, the car, all I have, if you will only live with me. If you want more money I will get it for you. I will do anything you ask me to do—please don't leave me." Witness replied that he had written that and that that expressed his sentiments at that time exactly. Again he was asked if he had written "You will get a fine dress, etc." "You may say I am bluffing—only give me a chance." He replied he had written that language and that he was ready to sacrifice everything to this woman for his home rather than have the disgrace and the loss of his child and his home broken up, and confess that married life was a failure. He was asked if he meant to say that it was on the theory that it was her fault that she left and he replied "strictly speaking, it was without a question of a doubt." He was then asked if he had written "As Christ forgave, would you do so and take me back?" He replied that certainly he had; that he was willing to go to any extreme to get his wife back. He was then asked if he had written "You can show this to Hanna, or anybody," and asked if he had anything in mind for which he sought forgiveness, to which he replied that he had not—absolutely not, except that he was willing to go to any extreme, reasonable or unreasonable. He had a
133 young baby, and rather than have the home broken up he would do anything—that is why he stated it. She had planned to divorce him and he would do anything to avoid having the home broken up. When asked why she did want to divorce him he replied apparently because he did not give her enough money. When asked if he did not know that she could not divorce him because he did not give her enough money he replied that he knew she could leave him and that his home would be broken up and that while she could not have a divorce on that ground in the District of Columbia, elsewhere she might. Asked if he had written "If I did not want you I would fight the matter in the courts, etc.," he replied certainly he had written it—he had not done anything to her. He was then asked to explain why he had written "Please give me a chance" and

he replied "Simply this—I had been doing everything possible—she wanted \$2,000—she wanted the \$2,000 that I had and I told her I would give it to her. Finally she left me—presumably for that very reason. She wanted that money and she felt I would go after her and she was right. I went for her to get her back. I wanted another chance to live together, regardless of the cause or reason why she left me. She made up her mind she would leave me. I did not want the home broken up and the scandal and the disgrace and confess that married life was a failure." He was asked if he had not also written "Please come to the apartment and see it and use it. If you say it, I will get out and wait until you say I can come to you." He replied that he had written that, and when asked what he meant he said that she had probably gone to a hairdresser and he had a little baby and did not know the treatment the baby would get there. He had an apartment that had plenty of heat and everything of that kind and wanted to be sure that the baby was well taken care of and was comfortable; that it showed very plainly on that point. He was then asked if he had been nagging her and he said that he had not, except when she cursed and swore at him and he told her that that sort of thing was unladylike. He had not made a mistake when he had written "I will not nag you." He further testified that he was ready to take her back to keep his home together and had written that he was enclosing a check for \$50. for her to do with as she wished, and had given Hanna one for \$100 to do with that what she wanted.

134 When told that counsel understood him to say that she was always making unreasonable demands for money, he replied that she did, but nevertheless he was willing to do that to get her back and keep his home together. He could not say that the Hannas got her back—his wife was at their place—he went there—and he presumes that through their instrumentality they got together. Hanna went with him and his wife to Woodward & Lothrop and the witness waited outside with Hanna while his wife went in to make some purchases. From there they went to the restaurant—the four of them. He was then shown plaintiff's Exhibit 1-M, and testified that he wrote that within a day or two of the other letter and before the reconciliation. When asked if he said in the letter he would

die if she did not come back, he said that he had—it was his own word—he was very much in love with his wife. He wrote “Jannett, Jannett, you once loved me, take me back, forgive me.” He was asked what he meant by “forgive me” and replied that he thought it was very obvious what he meant. He was willing to demean himself to any degree to hold his home together, and when asked if he had not been doing that before the letter was written he stated that he would go still further—he had not given her the two thousand dollars but would have given it to her. He had not done anything, however, that required forgiveness, except in this way—if he had been negligent in any way he was willing to confess it and do what she thought was right. He had also written “I will do anything you ask. I am going insane from this.” He further testified that he was upset mentally. He further wrote “Go to Boston, or anywhere, but don’t divorce me and leave me for good. I will get you that beautiful wrist watch at Galt’s the platinum watch.” He admitted this and testified that his wife demanded it; that the platinum watch was the price of her return to him. She demanded it, and he told her he would get it as soon as he had money enough to buy it with. He was asked if he had written “My money means nothing without my wife and baby, my own girl, that I have slept with so many times.” He replied that he had; that he had written those words; that he was very much upset; he was very much distressed and very much confused, and he had written to her “I need you, O so much. Please, please, only don’t divorce me.” He was then asked:

Q. Divorce you for what? A. Ask her—she can
 135 tell you the reason. The point is she knew I was opposed to divorce and she knew that I was opposed to court actions, and she knew perfectly well that when I married her I married her for life—not for a day, not for a year, but for life.”

He also wrote “I will let you handle all my money, and will not hurt your feelings.” Asked what he meant by “hurt your feelings” he replied “If by doing anything or saying anything to hurt her feelings, I was sorry for it.”

When asked if he had been in the habit of hurting her feelings he replied: “No sir, not in a justifiable way—no

sir—I could not be accused of that.” He had written “O, I beg you from the bottom of my heart, give me another trial,” and he meant by that that he was willing to make every concession, reasonable or unreasonable; that is exactly what he meant by that. Perhaps they were foolish letters to write, but he was in great mental distress because she had taken his baby away and that expressed his feelings at the time. He also had written “Take the apartment, bring the baby back, and I will get out if you want me to only don’t please yourself for me—I will never hurt your feelings,” and, he said, he apparently had hurt her feelings in some way; that his wife went away he supposed; he did not want to do anything that would hurt her and he wanted her to forgive him for anything he may have done. He was frantic at thinking she was in some rooming house where she would not have the comforts of life and where the baby would become ill. He had also written “Mrs. Barry took back her husband—you take me back.” And also had written “Give me another trial please, as there is a God who forgives, please forgive your husband.” He was willing to do anything to get her back. He was then asked if he wanted to read the letter and replied that he did and said “I was willing to—you left out some of it—(reading) I am making myself as low as possible to you.” In other words he was demeaning himself to the lowest degree to keep his home together. He meant to say that her leaving was entirely her fault and not his; that it was with his consent that his wife went to Boston in January and gave her \$110.00 to make the trip. She wanted to see Mrs. Brannaggan, those old friends of hers there. When they

136 became reconciled in January they did not live happily until March 12th or 13th. She cursed at him, swore at him. Before that time she cursed and swore at him and when she returned it increased in intensity day in and day out—he made a record of it at the time. When asked if he wanted to be understood to say that he did not say to her “You get out of the house and take the brat out with you” he answered “I never did, never did I say that to her—never, never—never did I refer to the child as a brat.”

Q. Never? A. Never.

The final separation occurred March 12 to the 13th, 1924. It was on a Wednesday night. He heard Nettie testify but does not know whether Nettie was at the house or not. He assumed she was because she told him that Mrs. Warner was leaving and not coming back. It is not true that the act of leaving took place on the morning of March 13th. He did not know where Mrs. Warner went and did not go after her except that on the morning of the 13th when she wanted some money he told her that if she would come back that night and bring the baby with her that he would give her the money and he expected her back. Asked what was the occasion for these demands for money if he bought provisions for the house he replied that she wanted money for her own use. Her wardrobe was as elaborate as the wardrobe of any woman in her circumstances should be and as far as he knew the baby had plenty of clothes. He was asked what he meant by mentioning in one of his letters about the \$2,000 to find his wife's people, and he replied that she wanted \$2,000 to go to Russia and wanted to take the baby with her. He was very much opposed to her going there at that time—conditions were unsettled, and she told him later that she would not go in the spring, she would like money enough to go when she was ready and he was willing to give her the money when she was ready to go. In January he promised to give it because he had to buy her back, but he did not give it to her because the reason was obvious. Instead of returning as a dutiful wife she returned and increased in her language and conduct toward him and he saw the handwriting on the wall. He had \$2,000 to give her in bonds. He recalled going to the State Department on one occasion and recalled having written several
137 letters to the State Department about his wife's friends. She told him that she had lost all track of them and he believed that to be true at the time. The State Department sought to locate her people. It was just on one occasion that he told her that she could have the \$2,000 and go over and try to find her parents. That was the only time that he had fully intended to do so when she returned but she was much worse when she returned than before she went away. She was out nights, and even using most vile and unmentionable language toward him, his mother and his sister—toward himself—perhaps that was incidental com-

pared to his mother and sister. In other words, he was very much discouraged, and although he had promised to give her the money he was not going to do that when she acted that way and he could see the handwriting on the wall. He learned and could easily see that she did not want the money to go to Russia with but was planning on leaving him and could use the money nicely. His love for his wife had ceased at this time but had not when he filed his first answer. He changed his mind when she refused for a long period of time to let him see his baby, and he was going on sea duty. Not one cent of his wife's money went into the purchase of the automobile. She told him she had two or three hundred dollars in the Boston bank but never turned it over to him. She did not put up this money when the car was purchased and he never got one penny of it. He never used improper or abusive language to her since he was married. Naturally he had been upset by her language toward him and he told her that he was upset.

When asked if all of the writings that he had and brought the court were written by him at the time she used that sort of language toward him, he replied: "Not the worst—but the worst occurred after that was written;" that he wrote down what appeared upon the slips heretofore offered in evidence, absolutely right in her presence. He cannot recall that he saved them all, but they were written at the time, and he wrote the date of them at the time. He cannot say on every one. Examining this witness he said they were all his. They were written in 1924, the last three months they were living together. Before that time he did not write them down in that way because they were not so vile. She wrote nothing down because he never said anything for her to write down. On one occasion she said that she could write, the same as he could write, and that any court would believe her before they would believe
138 him—she was a woman and a foreigner. He saw what she wrote down and he saw her write it at the time with a green pencil. He did not suppose she had written down anything that he had said because he did not say anything, but what he wrote down he read to her in her presence. He did not suppose she read it; he wrote it verbatim on any piece of paper he had in his pocket. Sometimes it was on the back of an envelope.

Thereupon in rebuttal the plaintiff called **Florence Farnsworth**, who being first duly sworn testified that she lived in Washington and knew Mrs. Warner. That at one time she lived on the Naval Reservation at Pensacola, Florida from January until June, 1922 and knew Mrs. Warner down there—also Mrs. King, whose husband was a doctor. The witness' husband was an officer in the Navy, stationed there at the time. Her relationship with Mrs. Warner was just an acquaintance. She called and the witness returned the call. She knew Mrs. King better than she knew Mrs. Warner. She was at Mrs. King's house at a bridge party when she first moved to the yard and Mrs. Warner was there, either the last of January or the first of February, 1922—she was not certain. She never heard anything one way or another with reference to Mrs. Warner's reputation professing disloyalty and disrespect to the United States. He had never heard any epithet applied to Mrs. Warner in regard to her hostility to the United States. Had never heard her referred to as a Bolshevik. She never discussed Mrs. Warner with Mrs. King.

Thereupon in rebuttal the plaintiff took the stand and testified that she did not have the conversation about babies which Mrs. King testified to. She denied that she told Mrs. King or anybody else that she did not intend to have any babies, and knew how to stop them. She denied telling Mrs. King, or anyone else, that she hated America and the Americans. She never made that statement to anybody and she knew she never did. She denied saying that she regretted that Germany had not won the war or that she wished the war had lasted longer so that Germany could have won. She never heard about the two Japanese who were caught on the post in the fall of 1921. Had never heard about any Japanese being on the post until she came to court. She never said at the time that the balloon was lost that it served the American aviators right and she was glad they had been lost; that she did not know anything about that incident. She never said anything about it to Mrs. King. She was not closely associated with her- not a close friend of hers and did not know her very well and did not tell her very much at all. She never expressed to Mrs. King or anybody else at any time any disloyalty to the United States.

She was then shown Defendant's Exhibits Nos. 16-A, 16-B and 16-C, three sheets of paper which were handed to her and she stated that the first time she saw them was the other day in the court room and she had never seen them before. She was asked to look them over carefully and state whether or not she ever used that language and after examining the papers carefully she stated that she never did. She denied ever having used the expressions contained in Exhibits 16-A, B and C, and when asked if she had ever called any of those names to Mr. Warner said that Mr. Warner used to call her those names and she had not. She did not use those expressions; that she had never seen him write at home. She denied making excessive demands on Lt. Warner for money ever since their marriage and denied that that was the cause of their separation. She denied demanding \$2,000 or a bracelet watch in January, 1924 as the price of her return to Lt. Warner. It was Lt. Warner who made the first suggestion of a wrist watch. He had broken the watch which she had before her marriage. She never demanded \$2,000 from Lt. Warner, and she had never said she would not go back to him unless he gave her that, stating that she told him she would go back if he treated her right and did not strike her and did not call her names.

This concluded all the testimony, taken both for the plaintiff and the defendant and there being no further testimony both sides announced the case closed.

Thereupon the following occurred:

The Court: It has taken some time but there are just two points to be considered, so if you do not want to argue it I will dismiss the bill. I think I am justified in saying that of a good many of these cases I have tried, this is one of those that has the least merit in it. The plaintiff has a good man for a husband—some of them don't, and I believe he has done his utmost to be the kind of a husband which his letters and telegrams to the plaintiff before they were married showed that he wanted to be, and she said that she had
no money or comfort or clothing for herself and baby,
140 wherein her own admissions are absolutely against
her. She made a bad mistake. If there is any
remedy for it or not I don't know. There may be or not,
but at any rate she has absolutely failed to make out the

allegations of the bill and, therefore, the bill is dismissed on the merits.

Mr. Leahy: There is an amended cross-bill also, if Your Honor please, wherein the Defendant has asked for a decree granting a limited divorce.

The Court: I think he is entitled to it. His wife left him and she had no business to.

141 The deposition of **F. M. Roberts**, for the defendant, on direct examination, was substantially, as follows:

At the time he was Commandant's Chief Clerk at the Naval Air Station, Pensacola, Florida, and had been since the first of March, 1917, and was so employed while the defendant was there stationed as Aide to the Commandant. The defendant was his immediate superior and he came in contact with him more or less constantly during business hours, practically every working day, and had considerable conversation with him. Their offices were in adjoining rooms, but he frequently went into Mr. Warner's room and was admitted to Mr. Warner's office during conferences. When asked if he had very often been there when a telephone conversation would take place with Mr. Warner on one end of the phone and he had an idea who might be at the other end of the line, he said "That would cover a multitude of times." He had heard the defendant talk over the phone when the conversation would indicate that the other person was his wife, which he gathered from the terms of endearment used. Conferences were always held in Commandant's office, which adjoined the Aide's. The defendant had official business with other officers and heard telephone conversations at such times with the person he adjudged to be the same one. He had heard the defendant ask the other party to wait a few minutes, or that he would call later. The other party showed no signs of impatience to any unreasonable extent that the witness noticed. Mr. Warner was in and out of the office. When Mr. Warner was out, the witness would frequently answer the telephone and at that time was probably familiar with the speaking voice of Mrs. Warner and had talked to her over the phone and she would state that it was Mrs. Warner. If Mr. Warner was not in, she would ask where he was, or when he would be in.

If the witness told her he was out, she would at times seem to be irritated by such reply and showed the irritation by the tone of her voice. She spoke in kind of a snappy
142 voice and witness thought she hung up the receiver on him. He judged that she had lost her temper. He had seen the parties on the street once or twice and the defendant acted like a normal husband would act toward his wife. Never saw him intoxicated or under the influence of liquor. He said Warner's general reputation for sobriety and good character was good. On cross examination, witness said he never saw Mr. Warner after business hours and knew nothing of his home life after business hours.

Testimony of **Robert L. Slatten**, read on deposition for the defendant, was, on direct examination, substantially as follows:

At the time he was Captain of Police at the Naval Air Station, at Pensacola, Florida, and had been such for about fifteen years. He remembered Lieut. Warner when he was stationed there. The defendant was a lieutenant in the United States Navy and Aide to the Commandant and as such had official connection with the witness, who was in touch with him, he supposed ten or fifteen times a day. Witness knew the location of defendant's residence at the Station and went there two or three times, after working hours and one Sunday relative to the condition in which his wife was one time and on two other times relative to getting servants. The defendant's wife was present and one Sunday morning between nine and ten o'clock, while in Lieut. Warner's house, he noticed that the furniture was up-set in the hall and Mrs. Warner's hair was down her back and in general she was real ugly towards Mr. Warner. He remembered her calling the defendant a fool, when the defendant made some suggestion to her; he could not recall the suggestion, unless it was that they keep the servant they had. He never saw her attempt any violence toward him; she took it out mostly in talk. He tried at times to get servants for the Warners, but it was hard, each of them telling the same story—that Mrs. Warner was too hard to get along with. He never saw Lieut. Warner un-
143 der the influence of liquor, either at his home or out-

side. When Mr. and Mrs. Warner were together in his presence, Mr. Warner appeared to be very kind toward his wife and in love with her and acted as a gentleman should toward his wife. As Captain of police, the witness was the recipient of complaints, but never received any complaints against Lieut. Warner, either by his wife or any one else, or against Mrs. Warner. He never observed any bruises on the visible portion of Mrs. Warner's body, and he saw her practically every day. Never did he see any marks which would appear to show that any one had beaten her up. He said further that the general reputation of Mr. Warner for sobriety and character was excellent. On cross examination, he said he did not know who was responsible for the up-set furniture on the morning that he testified about, and knew nothing of what happened in the Warner home. He had all of his dealings with Mr. Warner at the Naval Air Station at Pensacola and did not come in contact with him when he was off duty. On redirect examination, the witness said he was of the opinion that the defendant spent most of his time at the yard, saying that at nights, when inspecting the yards, he would see the defendant at his quarters.

J. Simpson Reese testified on deposition, for the defendant, on direct examination, substantially, as follows:

At the time he was President of the Citizens & Peoples National Bank, at Pensacola, Florida, and had lived there practically all of his life. He remembered Lieut. Warner and came in contact with him in his official capacity as Aide to the Commandant on several occasions. He never saw him under the influence of liquor and as far as he had seen him, defendant always acted in a gentlemanly manner. He had seen the defendant in company with his wife at several social functions, he would not remember how he acted on those occasions. Mr. Warner's reputation for sobriety was good. He had met him on social occasions many times and had never seen him intoxicated on such occasions. On cross examination, he said he did not know anything of Mr. Warner's home life with his wife, or what happened in his home.

The deposition of **A. Morley Darbey**, read in evidence on behalf of the defendant, on direct examination, was substantially as follows:

At the time he was an attorney at law, practicing and living in Pensacola, Florida. From 1918 to 1922, he was an officer in the Naval Reserve, stationed at Boston, Massachusetts; for the first four months of 1918; and the balance of the time at Pensacola, Florida. He first met in Boston, Lieut. Warner, who was later transferred to Pensacola and became very close friends, constantly in touch with each other, both officially and socially. There was hardly a day that they did not see each other and talk. Prior to Mr. Warner's marriage, he had had a number of conversations about marriage. The defendant would show him pictures of the woman he afterwards married and letters that would pass between them. The letters from her were at times endearing and at other times vituperative. At all times Mr. Warner expressed his great love and affection for her, and when she would write that everything was off, he would show the witness letters begging for reconciliation and would be low-spirited until reconciliation was effected. Prior to his marriage, Mr. Warner ceased completely the use of intoxicants, though he would formerly occasionally take a drink, but for a full year or more, witness had never seen him take a drink, but frequently refuse one. During the Christmas of 1920, he saw Mr. Warner take one egg-nog and Mrs. Warner abused him frightfully for taking this one drink, accusing him of being drunk and being no gentleman. In April, 1922, witness was detached from the Air Station at Pensacola and did not see the defendant

145 until five or six months later in Washington, District of Columbia. At all times when Mr. and Mrs.

Warner were in his presence, the defendant acted toward his wife as a gentleman should, in a courteous, kind and generous way. He never heard the defendant use rough or uncouth speech to her, or act in a manner that would or should cause her to complain. He had frequently been, on official business, in Mr. Warner's office at the Pensacola Air Station and when the telephone would ring, the conversation that ensued would be approximately: Mr. Warner would say "I am very busy, dear, right now. I will be

through in a few minutes and I will call you". In two or three minutes, the phone would ring again, and the same conversation would take place; this would happen four or five times during a very brief period. Frequently the noise in the receiver would be so loud as to be audible to any one standing in the room and he distinctly heard Mrs. Warner on one occasion say "Why the hell you can't talk to me, you have time to talk to those damn men; why the hell you can't talk to me". Before Mrs. Warner's child was born, he noticed she was in a very irritable condition. On the various occasions he had seen Mrs. Warner, he had never seen any marks or bruises on those parts of her body which were visible, nor had he heard her complain of any treatment such as would cause bruises or marks. He had seen them together in the B. & B. restaurant and they were apparently as happy a couple as the witness had been privileged to see. When they were in public there was no apparent friction. On cross examination, he was asked if he knew anything of his own knowledge about what happened in the home of the parties, and said he had been there on one or two occasions, and what he saw there constrained him from repeating his visits. He was never made to feel comfortable by Mrs. Warner and, after one or two attempts to be congenial, he refrained from repeating his visits. When asked if he knew the defendant to continue in the habit of taking intoxicating liquor after the Christmas season of 1920 he spoke about, the witness replied, "I saw Mr. Warner frequently after that for a year and several months and at no time after did I see him take a drink of liquor". He had never smelt it on his breath and had been close enough to the defendant that had he taken a drink, witness believed he would have noticed it, but had never noticed such a thing. Witness said that he was thrown in contact with Mr. Warner to a great extent after his marriage and at times when he was not on duty. He said that when Mr. Warner lived at the North Hill apartments, Warner purchased an automobile, but did not know how to drive it and witness taught him and for many days drove him to the Navy Yards and took him home after working hours. They would frequently stop for a few minutes for ice-cream or something of that kind and on numerous occasions when Warner was studying

for examination, he would be in company with him after working hours for considerable periods of time. He had been with Lieut. Warner at dances, although the defendant did not go to dances after his wife became enciente.

The deposition of **Eugene P. Elebash**, read on behalf of defendant, on direct examination, was substantially as follows:

At the time witness was a professional jeweler, having a store for seven years in Pensacola, Florida. He knew Lieut. Warner and came in contact with him and his wife in his store. When he saw them together he saw nothing wrong; they acted the same as any other couple. He never saw Mr. Warner under the influence of intoxicating liquor. Mr. Warner's general reputation for sobriety was absolutely all right. On cross examination, he said the only time he saw the defendant was when he would come into the store in the day time to buy goods and in the ordinary transaction of business.

The deposition of **Jack Crenshaw**, read in evidence on behalf of defendant, was, on direct examination, substantially as follows:

At the time he was in the automobile business at
147 Pensacola and had been for six and one-half years.
Remembered Lieut. Warner with whom he came in close contact. Never saw him under the influence of intoxicating liquor and so far as witness knew the defendant did not drink. The Lieutenant purchased an automobile through him and he thereby became acquainted with Mrs. Warner and saw them together. There was nothing unusual in their conduct. He never saw any marks on her body or anything that would lead him to believe that she had been mistreated. He had seen the parties at dances and the defendant was sober. He had never seen him intoxicated. The defendant had always acted in a gentlemanly manner. The defendant's reputation was such that the witness gave him a credit for the balance due on the car. He met the parties at their home and played cards two or three times, and they were perfectly normal. On cross examination, he said he would sell any Naval officer a car,

whether he knew they would drink liquor or not, and the sale of an automobile to a Naval officer would not necessarily mean that the officer never took a drink. Asked if he knew of his general reputation in the community, the witness said he knew it in the apartment house where they lived and it was no different from that of the average people who lived in apartment houses. He remembered that soon after they were married, they came in the apartment house in which the witness lived and the people of the apartment tried to extend courtesies, and the ladies of the apartment tried to be nice to her. Witness moved from the apartment soon after that. Other than that, he knew nothing of how Mr. and Mrs. Warner got along.

Deposition of **James A. White**, read on behalf of the defendant, was, on direct examination, substantially as follows:

At the time he was proprietor of a store at Pensacola, Florida. He remembered Lieut. Warner, with whom he had had business dealings, but never saw him outside the store. He had seen Mrs. Warner, and had seen
148 them together, and the Lieutenant's conduct toward his wife was very pleasing; Honey Moon like, very loving. The witness made the remark several times that they were a very loving couple. He had never noticed the defendant under the influence of liquor and had never smelt liquor on his breath. His reputation for sobriety and good conduct was good. On Cross examination, he said he knew nothing about their home life. He never saw Lieut. Warner in his home, but when in the store, they were very friendly and loving and the Lieutenant always consulted his wife about his purchases and that condition continued until they left Pensacola. On redirect examination, he said he had never seen any bruises on the plaintiff, or marks on her that would lead him to believe that she had been mistreated.

The deposition of **Albert Tucker**, read on behalf of the defendant, was, on direct examination, substantially as follows:

At the time he was a lieutenant in the United States Navy, and knew the defendant. Witness came to the Air Station

at Pensacola in March, 1919, and came in daily contact with Lieut. Warner, until the Lieutenant left. The Lieutenant was Aide to the Commandant and the witness came in contact with the Lieutenant on very few social occasions. He never saw Lieut. Warner in an intoxicating condition, or under the influence of liquor. The Lieutenant's conduct was always normal when the witness saw him and acted as an officer and gentleman should act. So far as the witness knew, Mr. Warner's general reputation for sobriety and character was good. He never saw Mr. Warner and his wife together. On cross examination, he said he never saw Mr. and Mrs. Warner in their home together.

149 The deposition of **George F. Willicombe**, read for the defendant, on direct examination, was substantially as follows:

At the time he lived at De Leon, Florida. He lived in Washington about twenty-five years, until June, 1924. He first met the defendant in the latter part of September, 1923, when witness was night clerk in the Fairmont Inn, into which Mr. Warner came and asked for a room about 1:30 in the morning. Witness could not tell that the defendant had been drinking at that time. Defendant had a rather pale, worried expression on his face. He let in the defendant, passed within a foot of him. He smelled no liquor on his breath. The defendant roomed at the Inn about a month and the witness saw him every twenty-four hours, when he would come into the hotel in the evenings. He did not see the defendant intoxicated. Defendant kept very good hours and often sat in the office and talked. During that time the defendant had telephone conversations with his wife. After Mr. Warner left the Fairmont Inn, he lived on Que Street, No. 3000 and something. Defendant left in the winter. Witness went out on two occasions with Mr. Warner, about 7:30 in the evening, to Mrs. Warner's apartment. He did not see her the first time, he saw the baby. The apartment was not kept well or neatly. They had a girl working for them. The baby was not being well taken care of. It was sleeping in the crib, in a pair of pajamas, with not a sheet under or over it. The second occasion of his visit to Mr. Warner's apartment was the

evening of the desertion, about the 12th of March, 1924. Neither Mrs. Warner nor the baby was there when he arrived. He noticed that the crib that he had seen on his former visit was gone. On the second visit they went about 7:30, and Mrs. Warner came in about 10 or 10:30. When she saw witness she asked him who he was and wanted to know if he was a lawyer. Witness told her he was a friend of the defendant's. She started to fuss and abuse the defendant. She was a foreigner and did not speak good English. The witness got one statement that she made, viz: that she had picked lice off the defendant. She seemed to want to humiliate the defendant in the presence of the witness. This sort of thing continued for about fifteen minutes, during which time the defendant was quiet, being in another part of the room from where the witness was.

150 The only abusive, uncouth language he heard Mrs. Warner use was that she had picked lice off the defendant. He had never seen Mrs. Warner before, or since. While the conversation was going on Mrs. Warner was not seated, she was up on her feet; she was moving around the room. They were in the room adjoining the room he was in. The one statement he caught was when he was in the room near her. Witness remembers no remark she made when she was leaving. She called a taxi and took the trunk out. Everything was quiet. Mr. Warner left about a half hour later, it might have been longer, in company with the witness and they went to the rooming house of the witness at 1504, 21st Street, where the defendant stayed until the witness left Washington, which occurred on the 7th of May, 1924, during all of which time the witness saw the defendant every night: they roomed together, slept in the same bed. He never saw the defendant drunk. The defendant's reputation for sobriety and good conduct at that time was good. Cross examination, stated he met the defendant in September, 1923, at which time witness was night clerk at Fairmont Hotel, a house of about forty rooms, which was filled most of the time. It had a few transients, but mostly the guests were permanent. Witness went on duty about 7:30 or eight at night. Asked how he happened to remember the time defendant came in, said he was awake all night, but could not remember any one else in particular that came in that night; people were going and coming in all night, but he

didn't notice any one else especially. No one else came in at the same time, as the witness remembers. Nor could he remember who came in the night before at that time. Witness said he was used to most of the people, but the defendant was a stranger and he happened to remember him. The hotel occasionally had transients. The defendant registered when he came in and the witness showed him to his room in the usual manner and paid no more attention to the defendant than he would to any stranger who came as a guest of the house. The defendant remained about a month, as near as the witness could remember, and worked in the Bureau of Aeronautics in the Navy Department, being due at work at nine o'clock and leaving the hotel about 8:30. The witness was off duty before the defendant left for work in the mornings. Witness did not always go to bed when he went off duty, nor did he see the defendant regularly when he got up to go to work. He may have seen him once or twice. Could not say whether the defendant went to work steadily every morning. The busy part of the night was the early part, about 7:30 to 11 or 12, when his time was taken up mostly looking after the guests and matters of the house. The defendant often came into the office and talked with the witness, who was not so busy at times, but that he could speak a few words with anyone. He could not give the exact date when he visited the Warner apartment with Mr. Warner; it was either the latter part of February or the first part of March, 1924. He could not remember the day of the week when he visited there, but it was after the witness had quit his job as night clerk and was selling Dr. Gray's Pain Relief Ointment, in which there was no alcohol. On the first visit to Mr. Warner's apartment, he saw the baby he supposed was Mr. Warner's. Mr. Warner picked it up and fondled it. He had never seen the baby before; he saw the baby at the boarding house afterwards, where he was brought by the defendant. He judged the baby was 14 or 15 months old. He did not see a girl at the Warner apartment, but Mr. Warner told him at the time that he had a girl there. They left Warner's apartment about 10 or 10:30 on the first visit. The second visit was on March 12, 1924, but he could not say it was ten or after the first visit. He knows it was around the first of February, "so it might have been ten

or twelve days." At the time Lieutenant Warner was in the Aeronautics Department of the Navy and witness could not state exactly how often he saw the defendant; he saw him every few days. Defendant would come over to witness' room occasionally. The witness left the hotel about the 19th of February, and Mr. Warner was with him more than once after that; coming to witness' apartment in the evening. After the second visit to the Warner apartment, the defendant came to stay with the witness, and continued to live with him until the witness left Washington. The witness was not then married, but was at the time he testified and at the time he testified was employed at the B. Jones store at De Leon, Florida. He described the Warner apartment as containing a living room, a bed room, a small room adjoining the living room, a child's room with toys in it, kitchenette and bath. He did not believe there was a dining room. On the second occasion they were at the

152 Warner apartment, Mrs. Warner came in about ten o'clock and witness judged he left at ten-thirty or eleven o'clock. Mr. Warner did not introduce his wife when she came in. Witness was in the adjoining room when she came in. Mr. Warner was in the room that witness believed was their bed room. Witness could not tell whether they had an ice box, or where the ice was kept. Witness did not introduce himself to Mrs. Warner; he had never met her before and when she came in witness did not know who she was, but she wanted to know who the witness was, and witness told her that he was a friend of Lieut. Warner's; didn't tell her who he was. When asked if witness could understand all that was said, he replied: "They were talking out in the adjoining room and then she did not speak distinct English. Most of the conversation took place in the bed room. The only thing the witness had stated on his direct examination that he understood the plaintiff to say was that "I picked lice off of you." The defendant told witness that he had been in the Navy, but that he did not go over seas. Witness was not paying much attention to the conversation, but was reading a newspaper. Witness was asked if he didn't pay practically no attention to the conversation and his answer was "No, only that I could hear her talking to him; it seemed to be in an abusive tone, or broken English, so I could not catch what she was say-

ing, only when she came in I understood her when she said: "I have picked lice off you." Witness was not looking at them when they were in the bedroom talking. He could not have seen them if he had been looking that way. He did not see the baby there that evening. He could hear the defendant talking in the other room, but the defendant didn't speak in a loud tone of voice and witness could not tell what he was saying to her and did not know what kind of character of language the defendant used toward her in that conversation. The indecent and uncouth language that he heard Mrs. Warner use was that she had picked lice off the defendant. Witness was never at any time introduced to Mrs. Warner. Mr. Warner stepped out in the hall and a few minutes later a taxi driver came in. Witness supposed she called over the phone. The driver took the trunk out of the apartment, but witness did not know whose trunk it was. After Mrs. Warner left, the defendant went with the witness to the witness' room. Witness was asked "Who have you ever heard discuss Mr. Warner's reputation, as to good conduct and sobriety?" Answer. "Well, I do not know if I ever heard anyone discuss it."

153 Question. "Your answer was based on your knowledge of and conduct with Mr. Warner?" Answer. "Well, I never heard anybody say anything against him."

Question. "Then when you say he bore a good reputation as to sobriety, you are basing that on what you thought you knew about Mr. Warner yourself?" Answer. "Yes, sir."

On re-direct examination, witness said when Mrs. Warner first came in she spoke the first words. When asked to repeat to the best of his knowledge the exact words which she used, he answered: "She asked me if I was a lawyer?" The witness answered that "I (he) was a friend of Lieut. Warner's." There was no further conversation between witness and Mrs. Warner, who went into the bedroom and started conversing with the defendant. Witness had testified that he slept in the same bed with Mr. Warner but had never seen any lice on him. On re-cross examination witness was asked "Did you ever look over the body of

Mr. Warner to see if there were any lice on him? Answer. "No, sir, we were not quite that intimate."

154 The deposition of **Samuel B. McMurrain**, for defendant, on direct examination, was substantially as follows:

At the time of testifying was living at West Palm Beach, Florida, and was a lieutenant in the United States Navy from August 1st, 1918, till September, 1925, when he resigned. While in the Naval service he was stationed at the Pensacola Air Station in Florida, from October 1918 to July 1922, and practically his entire time there knew the defendant, but he did not know his wife. He knew nothing about their home life in Pensacola. He was familiar with the reputation of Lieut. Warner in Pensacola and it was excellent. Mr. Warner was transferred from Pensacola in the Spring of 1922 and went to the Bureau of Aeronautics in Washington, District of Columbia, to which department the witness was transferred in July 1922. While in Washington he saw Mr. Warner practically every day and there met Mrs. Warner. He saw the parties together on one or two occasions and Mr. Warner's attitude towards her was about the same as the average husband towards the average wife, and her attitude was the same as his towards her, but on one occasion when she visited the defendant's office in the Navy Department, she made certain demands of the defendant pertaining, witness thought, to financing. "She was quite out-spoken. She came into his office, which adjoined mine, and demanded in a very loud tone of voice that he give her a certain sum of money. Mr. Warner appeared very embarrassed, and the two left the office together." He recalled the incident that happened at the Warner apartment about five o'clock on the evening of Wednesday, March 12th, and stated the incident as follows: "Mr. Warner telephoned me and asked if Mrs. Warner had been to witness' home that afternoon. Witness learned from his wife that Mrs. Warner had left witness' home shortly previous and witness so informed the defendant, who asked witness to come to Navy Department and take him home, as Mrs. Warner had promised to call for the defendant at 4:30 and had not done so. Witness drove

to the Navy Department, got Mr. Warner, went to the commissary, secured several packages which had been prepared for Lieut. Warner and set aside. They went to Lieut. Warner's home and found there only the maid, who stated that Mrs. Warner had requested the maid to inform Mr. Warner that she had left the house, taking the baby, not to return. Mr. Warner left and drove to Dupont Circle, 155 where Mr. Warner left the witness, who gave him money to purchase dinner. When asked if he said "That the maid told Mr. Warner that Mrs. Warner had asked her (the maid) to tell him (Mr. Warner) that she had left with the baby?" he answered, "That was my understanding of the matter," "The maid delivered the message for Mrs. Warner." He did not know the baby was in the apartment at the time, nor could he say if any of the baby's furniture was missing. During approximately two years prior to March 1924, he had seen Lieut. Warner practically every day and had not seen him intoxicated. He further stated that he was familiar with Lieut. Warner's reputation for sobriety and good conduct in Washington and it was good. When he was asked if he had ever had occasion to discuss Mr. Warner during that time, he said "I don't recall that I ever heard anyone say anything against him." On cross-examination, witness stated that he was in the Naval service during the entire period that he was stationed at Pensacola. The defendant was married only a short period of the time he was stationed in Pensacola and his wife lived with him, but witness did not know his wife, and had no opportunity to observe the relations between the parties during the time they lived in Pensacola. He knew the defendant during practically the entire period that witness was in Pensacola, but knew nothing about the treatment of the plaintiff by the defendant there. He is a friend of the defendant. Witness was asked if he could state definitely whether the defendant's reputation for sobriety was good or bad in Pensacola and in Washington, and answered: "I was with Mr. Warner a large part of the time prior to his marriage and saw him practically every day after his marriage, and from my knowledge of his reputation I would judge it to be good," which answer was based both on personal observation and

statements of others, but witness relied more on his personal observation. Witness saw the defendant take a drink both before and after his marriage. Witness saw the defendant take only one or two drinks on two occasions after his marriage. Once when they were guests of the Aviation Detachment of the British Embassy, and the other the French Embassy, but could not recall that he had ever seen the defendant take any drinks on any other occasion. Witness had never at any time seen the defendant when witness believed or was lead to believe that the defendant had taken drinks out of his presence. While both
156 were stationed in Washington, witness saw the defendant practically every day, from nine in the morning till 4:30 in the afternoon; their offices adjoining. He saw the defendant largely by reason of their association in the service, and did not ever see him again in the evening, and had no opportunity to observe the defendant other than during the day time. While in Washington the witness had no opportunity, at any other time than those mentioned in his direct examination, to observe the relations between the parties in this case, and knows practically nothing concerning the home life of the defendant, from personal observation. Witness could not say that he heard the entire conversation between the defendant and his wife at the defendant's office, about which the witness testified on his direct examination, and it is possible that there may have been some conversation preceding the loud demands of the plaintiff. The plaintiff was apparently asking the defendant for money, but witness could not say she got it.

157 PLAINTIFF'S EXHIBITS 1 TO 1-J-1-E, G, H AND J HAVING BEEN WITHDRAWN BY PLAINTIFF'S COUNSEL.

Western Union Telegram.

NA Pensacola Flo 21.

Miss Jeannete Cozlen,

701 Boylston Street, Brookline, Mass.:

Sweetheart I am much worried over not hearing from you
If I do not receive an answer to this immediately I shall wire the doctor.

Lt. PAUL C. WARNER,
Naval Air Station, Pensacola, 1145.

Western Union Telegram.

Pensacola Flo 504P.

Mrs. Ella Bromggan,
Six Dane St., Beverly:

Please wire immediately why I do not hear from Jeannette Am very worried

PAUL WARNER. 810P.

Western Union Telegram.

Pensacola Flo 1115AM July 31 1919.

Miss Jeannette Cozlon,
701 Boylston St., Brookline, Mass.:

Cold letter of Sunday received Cannot loose you Wire me immediately that you love me and will marry me

LIEUT. PAUL WARNER,
Naval Air Station.

Western Union Telegram.

Pensacola Flo 918A Sept. 27.

Mrs. E. Borgman,
6 Dane St., Beverly, Mass.:

Spare no expense of any kind or expert medical attention. Do everything that is possible. Am leaving for the North on this noon train. Will arrive Wednesday afternoon. Wire me condition care of ticket agent union station Atlanta, Ga., tonight and Union Station Washn. tomorrow noon.

PAUL C. WARNER. 222PM.

158

Western Union Telegram.

NA Pensacola, Fla., 115P 18.

Mrs. Ella Broggan,
6 Dane St., Beverly:

Have not heard from Jeannette today. Is Anything the matter? Please wire me immediately.

PAUL WARNER.

Western Union Telegram.

Charlotte, N. C., 1121A Sept. 28.

Mrs. E. Borgman,
6 Dane St., Beverly, Mass.:

Please wire me immediately care ticket agent at Danville, Virginia, as to Jeannette's condition. Do everything to save her life.

LIEUT. PAUL WARNER, 1219PM.

Western Union Telegram.

Pensacola, Fla., Jan. 15, 1920.

Miss Jeanette Cozlon,
702 Boylston St., Brookline, Mass.:

If you care for me wire me that you will marry me. Feel terrible over today's letter. Will marry you any time you say. Please answer this question immediately. Wire me before noon. If no reply will wire doctor. How could you write such a letter.

PAUL WARNER.

Western Union Telegram.

Pensacola, Fla.

Miss Jeannette Cozlon,
Boylston St., Brookline, Mass.:

Unless I receive an affirmative reply by ten o'clock Saturday that you will marry me this month I will wire doctor immediately. If your reply does not answer this question affirmatively I will not wire you again, but him in a matter as important as this I care not for publicity, but will learn the truth and learn it at once from the doctor.

PAUL. 430A.

Tuesday night, Nov. 18, 1919.

MY DARLING: Jeannette I am heart broken. Please be good to me. I don't know what to say or what to do. Honey if I don't have you I don't want to live. Sweetheart

please oh please love me. Darling can't you see I love you and only you. I got such a cold indifferent letter from you today. I can't write this letter because I am crying over you. I can't help it. Sweetheart tell me you will be my wife. I will see you inside of a month—won't that be fine.

Something tells me you still love me. After all you have written me. If I have done anything I am very sorry. Oh darling write me that you love me, that is all I want. I swear to God as He is my judge that I will kill myself if you turn me down. Maybe you don't believe me but wait and see. Could I write like this if I didn't love you? I cannot live without you. Am I fooling you. Sweetheart I am in utter misery. You doubt me. Must I kill myself to prove my love for you. You think I don't want you. I will die to prove it. I swear this to be true, so help me God. Jeannette, life, success, honor, mean nothing to me without you. I could never live and think you were in another man's arms—never—never.

I had hoped to get away by October but I could not, but I am sure by the middle of December, if I am alive. Do you want to think you were the cause of my death. All I live for is you. I have no girls here, want no girls. All I am and have is yours.

I had hoped my recommendation for a promotion would please you. Had I remained in service the next would have been a Lieutenant Commander, the same as the Russian Officer visiting her.

Now darling, it means if you don't marry me and love me that Paul C. Warner will not be alive and then you can't get him no matter how much you want him. Call me lovey. Oh honey I don't know what to say to you. I love you so and cry over you. Can't you tell I am so unhappy. Write me a loving letter. You call me lovey and tell me how much you love me. Maybe people have talked against me. I don't know.

160

Wednesday P. M., August 25, 1920.

MY DEAR JEANNETTE: I was very glad to hear from you today, though your letter seemed so short and cold. I hope you don't feel that way. I feel that when we are married that you will care for me. I am leaving for the North

about the 20th of Sept. and we will be married right after we reach there.

A real estate firm in town now are looking for a house or apartment that will be suitable. Also an auto salesman is trying to find a good car for me. I want to have the car and apartment all ready when we return the latter part of September.

So please write me *faily*. If you are not with me in thought then I am alone. You as my wife will be closer to me than any living soul. Please Jeannette dear write me the way I wish you to. You seem to be in such a hurry to finish a letter, nothing affectionate about them.

Love and kisses.

PAUL.

Did you receive that picture I sent, sitting in a chair?

161

Tuesday, A. M.

DEAR JEANNETTE: This letter I feel makes or breaks me. Jeannette I beg of you to go back to the apartment with the baby. That apartment was gotten for you two and you must come back to it. Do so today. I will not bother you. I will move out and let you have it and will not come back until you want me. Tell Mr. Hanna to call me up about it please. I can't bear to have you and the baby in a rooming house. I will gladly get out and give it all to you. Life without you isn't worth living. I would rather lose my right arm than to lose you. I am sick with worry. I can't bear to think of the years to come without my wife and baby with me. So please, oh please Jean take me back. I will give you everything, the car, all I have if you will only live with me. If you want more money I will get it for you. I will do anything you ask only please don't leave me.

You will get a fine dress for the reception next month and have everything I have. You may say I am bluffing but I will prove in writing my promises and if I break them you can leave me. Only give me a chance. That is all I ask. If I didn't want you I wouldn't write this way. If I didn't want you I would fight the matter in the courts. But no, sweetheart, I will not nag you and will make you happy. Please give me another chance. Please go to the

apartment and use it. If you say I will get out and wait until you say I can come to you. Have Mr. Hanna tell me so that I can do as you wish. This is a terrible thought. I would rather lose anything, my job, anything, rather than you and the baby. This is killing me. I want us to be happy together. I will turn over my pay check every month to you if you want it. What is money when I have a wife and baby at stake? Come out of the rooming house, go to the apartment where it is warm and you have things convenient and I will not disturb you. As Christ forgave, won't you do so and take me back? You can show this to Mr. Hanna or anybody. Your own true husband,

PAUL C. WARNER.

JEAN: I am enclosing a check for \$50 to do with as you wish. I gave Mr. Hanna one for \$100 last night. Do what you want with these.

162

Friday P. M. September 3, 1920.

MY DEAR JEANNETTE: I am heart broken over receiving no word from you. You who are to- dear and precious to me, more than life itself. Jeannette, dear, what is the matter? I couldn't write like this if you didn't mean everything to me—real love and love only. I feel that you must be sick. I am coming for you in about two weeks; please write and tell me you love me. You can have me, heart, body and soul. I am all yours. You know that sweet heart. I live for you, only for you, my own existence means nothing, it has no meaning unless it is joined with you.

Didn't I prove my love when I spent practically my last money in Washington so I could hear your dear voice? You mean more to me than father, mother or sister. Dearest how can you make me suffer this way? I am disconsolate.

Last night I read over some of your dear letters where you said you could never leave me. All your letters are put away in my trunk perfumed and sacred with your love and devotion. I am sending you a dispatch today. Hoping you will wire me. I cannot live without you.

Please don't be angry with me. I have not hurt your feelings in any way. I have been very careful. If you once

love me you love me now. I no longer recall the little quarrels and misunderstandings we have had in the past. They were unimportant and disturbances of life. I think only of your love, submissiveness and kindness.

Jeannette, darling, please, oh, please write me a loving letter. I have three days holiday before me. I cannot stand this holiday unless I hear from you. It will be terrible. The suffering of the head is a thousand times worse than the suffering of the body. I am thinking of taking a plane over to Biloxi, Miss., until Monday night with three or four other officers. I will write to you from there. A change will do me good. When I get back I will hope for a letter to be awaiting me.

Jeannette, my Russian Sweetheart, my wife soon to
163 be, when we die, we must be buried side by side, because you are my eternal, my final love, and I would rather see you dead than belong to another man. My sweetheart you are mine, mine to have and hold as my wife forever. A thousand kisses from

YOUR PAUL.

164

Tuesday Noon.

MY DEAREST WIFE: Sweetheart I will die if you don't come back to me. I would much rather be in my grave than to live without you. You are my own, dear wife, Jeannette. Jeannette, as you once loved me take me back and forgive me; I will do anything you ask. I am going insane from this. Go to Boston or anywhere but don't divorce me and leave me for good. I will get you that beautiful wrist watch at Galt's—platinum. My money means nothing without my wife or baby. My own girl who has slept with me night after night do not leave me now in my hour of distress. I need oh so much. You can do anything you want only don't divorce me, I beg of you. Think of the baby, her education, Wellesley. Think of China, duty. I will let you handle all the money and I will never hurt your feelings. Only this, I cannot live without you. I was never (my) earnest in my life. Please oh please I beg of you come back to my arms. Think of all the times we have loved each other. Jeannette I will not live without you; I

cannot. I will go insane. So I beg you from the bottom of my heart give me another trial; I am making myself as low as possible to you. Do with me what you will, only do not forsake me. I don't care about the disgrace of a divorce, only I want you, you, you. You were made for me—one woman—and I want you more than life itself. So please, my sweet girl, come to me, your husband, and do not leave me. I will go out of my senses. Take the apartment, bring the baby back and I will get out if you want me to, only do not free yourself from me. I will never hurt your feelings.

Please do consider everything my own and come back to Papa. He needs you and the baby. Papa, Mamma and baby. We will go to the President's Reception and I will get you a fine evening wrap and clothes. My money means nothing without my Russian girl. Do you remember that American officer who was killed in Russia and how his Russian sweetheart killed herself? That is how I feel about you. I cannot live without my own Russian girl. I will sell my bonds and give you the money to find your people. Anything except lose you. I will write all this before a witness. Mrs. Bergman took back her husband, you take me back. Come to me today, please. I don't know what more to write. Give me another trial. Please as there is
165 a God who forgives, please forgive your own husband.

PAUL.

DEF. EXHIBIT No. 1

Cross

Miss Adrienne Warner
daughter of
Mrs. Natalie Adrianoona Warner,
(nee Kozlova.)
and her ex-husband

=

Paul Charles Warner lieut U. S. N.
(son of Irish farmers.) ? ? ?
divorsed, January 1924, these
married folks have started the New Year right

Everybody follow.

hu - rray ha! ha! ha!

167 (DEFENDANT'S EXHIBIT CROSS 2.)

Called me G— D— reprobate. S— of a B—. D— tuff.
Dirty C—. Go and f— yourself. You are a sucker. No-
body wants you now and you have the bratt.

(DEFENDANT'S EXHIBIT 16—Feb. 29, 1924—11:40 P. M.

Come back dirty sh— a—. Come back dirty sh— a—. Dirty sh— a—. Sh— a— you. Full of manure you are. Dirty a—. Dirty sh— a—. Dirty sh— a—. Your mother is a dirty little sh—. She sits on her fat piles. Her a— is full of them (piles). Her hole is as big as a balloon.

She sits on her big piles. Your father is f—ing her a Catholic all his life. Ignorant Irish peasants. She's an ignorant. I will kick her in the a—. Christian is sticking it into Mary's hole now. Mary's hole is pretty large by this time. Mary is getting rid of them. Father has been s—ing your mother all his life.

(DEFENDANT'S EXHIBIT 16-A—Feb. 29, 1924.)

You're a damn old sh— a—. You're so damn stingy; you're a stingy man. You syphatic thing. I told Mr. Hanna you had lice. Sh— a— you. You are a sh— a—. You are a dirty sh— a—. Dirty sh— a—. Dirty sh— a—.

(DEFENDANT'S EXHIBIT 16-B—Feb. 29, 1924.)

Has your mother got lice around her hole? Your father has been se—ing your mother all his life, going off inside of her. You came from son of a b—. You're a son of a b—. Lice on your a—. Bop se—ing your Sister Constance. Snots coming out of her nose all the time. Your mother is so ignorant. Your father is good enough to f— your mother. She (baby) didn't come out of her hole.

168

DEF. EXHIBIT 18.

Saturday, April 24, 1920.

DEAR HONEY: I received your two letters this morning. I am glad you are feeling better.

It has been raining here all day and it is quite cold out now.

I had some more pictures taken last Thursday. I expect to receive my proofs Monday or Tuesday. The proofs that I have now are pretty good, but I look sad, that is why I don't want to send them to you. But if the new ones won't look any different then I will send them to you.

Dr. Chr. is sick. I hope nothing will happen to him. He is pretty old.

Are you going to sent me your snaps as you promised? I am waiting.

Will close with love and kisses.

JEANNETTE.

DEF. EXHIBIT 18-A.

Brookline, Mass.

1920

9 P. M.

Apr. 24.

Lieut. Paul C. Warner,
U. S. Naval Air Station,
Pensacola,
Fla.

169

DEF. EXHIBIT 15.

Thurs., March 17, 1921.

I will promise not to call my hubby names that I called him this afternoon, so help me Lord if I die this minute.

His loving wife.

JEANNETTE.

170

DEF. EXHIBIT 17.

Tuesday, June 1st, 1920.

DEAR PAUL: I have changed my mind about you. I don't want to see you nor hear from you any more. Please forget me. I will do the same. I will appreciate very much if you will send me my brothers letter. You said you had it in your trunk.

Don't write me any more. Don't write me. Leave this letter unanswered.

I will close with best wishes,

Good-bye,

JEANNETTE.

P. S.—I am leaving here 12 of June instead of 30th. Try and mail the letter to me before then.

J. C.

DEF. EXHIBIT 17-A.

Boston, Mass.
Back Bay Station
June 1, 1920
3 P. M.

Lieut. Paul C. Warner,
U. S. Naval Air Station,
Pensacola,
Fla.

171

DEF. EXHIBIT No. 13.

I, Antrenette Dorothy Hawkins, of Washington, in the District of Columbia, being first duly sworn, on oath depose and say:

That I am acquainted with Paul Warner of Washington, D. C., and his wife, and that I was employed by the Warners from January 16, 1924, until March 13, 1924, while the Warners resided together at 3032 Que Street, Northwest, since March 13, 1924. I have been employed by Mrs. Warner, at 1802 Sixteenth Street, N. W.

During the time I was employed at the Que Street house, I have never seen Mr. Warner drunk, nor have I ever seen him take a drink. He was courteous and polite in his treatment of his wife. I have never heard him use abusive or profane language in his conversations with his wife.

Three weeks after I went to work for the Warners, Mrs. Warner left the house saying she was not coming back. She told me if Mr. Warner asked where she was to tell him I did not know. She did this on three other occasions before she finally left Mr. Warner. On one occasion she took the baby with her, but the other times she left the baby, and went alone.

During my employment at the Que Street house the baby's care was mostly left to me. Mrs. Warner very seldom took the baby out with her. When she did take the baby she took me along to care for it.

When I went to the Que Street house on the morning of March 13, 1924, Mrs. Warner had gone. I was preparing Mr. Warner's breakfast when she returned and commenced removing articles from a trunk. Mr. Warner asked her what she was taking, and she told him it was none of his business. She then seized his coat, which was hanging on a chair in the dining room, and removed some letters from it and left the room. She left the room with the letters, and when she returned refused to tell Mr. Warner what she had done with them.

Mrs. Warner directed me to pack up the things. I helped her carry the baby's chair, and two dining room chairs to a house 2728 27th Street, where we stayed for about six weeks before going to the Sixteenth Street house. Later we went back and got the dining room table, she also
172 took part of the china and glassware. She took the automobile, and has kept it in her possession.

I worked at the Que Street house from eight A. M. until seven P. M. daily, and from eight A. M. until two P. M. on Sundays.

I was never there in the evening and never spent the night there.

I work for Mrs. Warner at present two days a week, from nine-thirty or ten A. M. until six P. M.

Given at Washington, D. C., this sixteenth day of October, A. D. 1924.

ONTRENETTE DOROTHY HAWKINS.

DISTRICT OF COLUMBIA, ss:

Subscribed and sworn to before me this sixteenth day of October, A. D. 1924.

[SEAL.]

J. CONNOLLY,
Notary Public, D. C.

DEF. EXHIBIT No. 14.

Affidavit.

I, Ontrenette Dorothy Hawkins, of Washington, in the District of Columbia, being first duly sworn, on oath depose and say:

That I am acquainted with Paul Warner of Washington, D. C., and his wife, and that I was employed by the Warners from January 16, 1924, until March 13, 1924, while the Warners resided together at 3032 Que Street, Northwest. Since March 13, 1924, I have been employed by Mrs. Warner, at 1802 16th Street, N. W.

Mr. Warner treated his wife in a courteous and considerate manner. He was thoughtful of her and the child and attentive to both. I never saw him drink nor have I at any time detected the odor of liquor on his breath nor have I seen intoxicants in the house at any time. Mrs. Warner appeared to have a violent dislike for her husband. She continually found fault with him and practically every day on some occasions several times on the same day would enter into violent argument, cursing and swearing at Mr. Warner, using language of a very vile character, and she also used similar language to him in discussing and characterizing his parents, particularly his mother and sister. Mrs. Warner on three or four different occasions told me that she was leaving Mr. Warner. On one occasion she left the house taking the child with her, saying that she would not come back and that if Mr. Warner should ask where she was to tell him I did not know. On three other occasions she left, saying that she would not return but did not take the baby with her.

She left the care of the baby almost entirely in my hands. She very seldom took the baby with her and on the few occasions when she did take the baby with her she required me to go along to take care of it. She would accuse Mr. Warner of withholding money from her and applying it to his personal use, saying that he was saving it or wasting it. Mr. Warner, however, at all times during my employment at the Que Street house made ample provision for the care of Mrs. Warner and the baby, Mrs. Warner at all times being well dressed and making frequent purchases of new clothes for herself. She made very few purchases of clothing for the baby, practically all of her purchases being clothing for her personal use. The best of food was provided at all times in ample quantities.

174 Mrs. Warner finally left Mr. Warner on the afternoon of March 12th, 1924, taking the baby with her

and saying that she would not return. She did not say where she was going. After she had gone, Mr. Warner, accompanied by Lieutenant McMurrain, came to the house at about 5:00 o'clock P. M., carrying provisions for the evening meal. Mr. Warner appeared surprised that Mrs. Warner had gone, after being informed of that fact by me, but made no remark to me other than to excuse me for the balance of the day. I returned to the house the following morning at 8:00 o'clock and Mrs. Warner was not there. Later, about 8:30 while Mr. Warner was dressing, Mrs. Warner returned to the house. She was wearing street clothing. Mrs. Warner went into the dining room and removed Mr. Warner's coat from a chair where it was hanging and took from the pocket of the coat a bundle of letters. Mr. Warner came into the kitchen where Mrs. Warner had come in the meantime, and asked what she had done with the letters. She said that it was none of his business. Mrs. Warner then asked Mr. Warner for money; he told her that he had none then but would get some and would give it to her if she would return with the baby by 6:00 o'clock that evening. Mr. Warner left the house, and shortly after Mrs. Warner left. She returned about noon, directing me to pack up and leave with her, saying that I was working for her and would have to go with her. Subject to her directions I packed the baby's clothing and toys and went with Mrs. Warner and the baby in Mr. Warner's automobile which she drove to 2728 27th Street, where Mrs. Warner had engaged a room. She apparently had made arrangements for the room prior to our going there. On Saturday night following (March 15, 1924), Mrs. Warner took me back to the Que Street house where she removed two dining room chairs, a dining room table and part of the china and glass ware. She put the chairs, china and glassware in the automobile and the table was taken to my house and left there over night, Mrs. Warner getting it Sunday morning following. Mrs. Warner also had a man remove the trunk from the Que Street house to the house on 27th Street at this time. The automobile which she was using was Mr. Warner's but Mrs. Warner appropriated it at this time and has since kept it in her possession. On the following Monday Mrs. Warner and myself returned to the house on Que Street and at this time she

took away the bed linen and blankets. About two
175 weeks later we went back to the Que Street house
and this time Mrs. Warner removed a rug from the
dining room and took a vase from the top of the bookcase
in the living room and two or three pictures from the wall.
There was in addition a blue vase on the bookcase which
Mr. Warner's sister had given to them. At the time she
took the first vase she remarked that "Mr. Warner would
have nothing left now," taking the blue vase and breaking
a piece off the upper part of it and hiding the piece on the
shelf in the kitchen. I did not see Mrs. Warner remove
any of the other furniture which she has in the house at
1802 16th Street to which she moved after spending about
six weeks at the 27th Street house, consisting of a sewing
machine and refrigerator which were formerly used at the
Que Street house. She also has the electric floor lamp.
She also has a large leather suit case and small mahogany
fern table. Mrs. Warner also now has at the 16th Street
house additional pieces of china and glassware which she
got while I was not present. Mrs. Warner during my em-
ployment at the Que Street house was frequently visited
by people who appeared to be Syrians and Armenians.
They were very uncouth in appearance and in their man-
ners. They very rarely came while Mr. Warner was there.
Mrs. Warner visited them, Particularly during the day time
when Mr. Warner would be absent. She made these visits
two or three times every week, leaving early in the morn-
ing and not returning until late in the afternoon. On these
occasions which occurred two or three times a week she
would leave the baby home with me. When Mr. Warner
would return while these people were visiting, Mrs. War-
ner would upbraid him and would frequently use the pro-
fane and vile language in the conversation in the hearing of
these visitors.

Since the separation of Mr. and Mrs. Warner, Mr. War-
ner has visited the house every week on Wednesday and
Sunday to take the baby out with him. His appearance
would irritate Mrs. Warner and she would become very
angry. She swore at Mr. Warner on two or three of these
occasions and on one occasion she ordered the man who
accompanied Mr. Warner to leave the premises with no
apparent reason. On one occasion during the time they

were living on Que Street, Mrs. Warner said that she needed money and that if Mr. Warner did not give it to her she would go down to the Navy Department and get it. Another time she told Mr. Warner in my presence that if he would not give her \$2,000.00 she would get a divorce from him. Since the separation of Mr. and Mrs. Warner as I remember the occasions, when the baby would remark about its father, would remonstrate it and told her not to talk about him. She wants the baby to forget its father.

(Signed) ONTRENETTE DOROTHY HAWKINS.

Subscribed and sworn to before me this 18th day of October, 1924.

[SEAL.]

J. V. CONNOLLY,
Notary Public, D. C.

WILLIAM E. LEAHY,
HARRY A. HEGARTY,
Attys. for Defendant.

177 The foregoing statement of the evidence and bill of exceptions, true, complete, and properly prepared, is by the Court, this 6th day of October, 1926, now for then, signed, and sealed, and made a part of the record.

WALTER I. McCOY,
Chief Justice.

178 [Endorsed:] Equity. No. 42435. Natalie A. Warner, Ptf., vs. Paul C. Warner, Def. Statement of evidence on defendant's appeal. Law offices-William E. Leahy, 943-951 Investment Building, Washington, D. C. Main 558. Main 559.

Endorsed on cover: District of Columbia Supreme Court. No. 4550. Paul C. Warner, appellant, vs. Natalie A. Warner. Court of Appeals, District of Columbia. Filed Jan. 8, 1927. Henry W. Hodges, clerk.

MAR 11 1927

IN THE

Court of Appeals, District of Columbia

JANUARY TERM, 1927.

No. 4550.

PAUL C. WARNER, *Appellant*,

vs.

NATALIE A. WARNER, *Appellee*.

BRIEF FOR APPELLANT.

WILLIAM E. LEAHY,
HARRY A. HEGARTY,
Attorneys for Appellant.

LIBRARY

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

THE ASSOCIATION OF THE BAR
OF THE CITY OF NEW YORK

INDEX.

	Page
Statement of the Case	1
Assignment of Errors	5
Argument	6
Assignment of Errors 1-3	5
Assignment of Errors 2-4	14

TABLE OF CASES.

Bensen vs. Bensen, 20 Cal. App. 462.....	12
Brenot vs. Brenot, 102 Cal. 294.....	10, 11
Cornelius vs. Cornelius, 31 Ala. 428.....	10
Cowes v. Cowes, 8 Ill. 435, 440	15
Davis vs. Davis, 75 N. Y. 221	10, 12
Defee vs. Defee, 51 S. W. 274	11
DeFerri vs. DeFerri, 222 Mass. 38	12
Finlay vs. Finlay, 240 N. Y. 429	12
Graft vs. Graft, 76 Ind. 136	15
Garrett vs. Garrett, 114 Ia. 439	10
Horton vs. Horton, 75 Ark. 22	11
Hoskins vs. Hoskins, 28 Ky. L. Rep. 435.....	11
Jacobs vs. Jacobs, 161 N. W. 525, 1917-D-L. R. A. 971	11
Keppell vs. Keppell, 92 Ga. 506	10
King vs. King, 42 Mo. App. 454	10
Knoll vs. Knoll, 114 La. 703	11
L. R. A., 1917-D-976	11
Luck vs. Luck, 92 Cal. 653.....	10
Nichols vs. Nichols, 3 Duer 642	11
Power vs. Power, 65 N. J. Eq. 93.....	11, 12
Reding vs. Reding, 85 Atl. 712	12
Seeley vs. Seeley, 30 App. D. C. 192	15
Simon vs. Simon, 159 N. Y. 549.....	10
Slack vs. Perrine, 9 App. D. C. 129.....	14
Snow vs. Snow, 52 App. D. C. 39	15
Stickel vs. Stickel, 18 App. D. C. 149	15
Thomas vs. Thomas, 250 Ill. 354; 35 L. R. A. 1158	9
Towson vs. Towson, 49 App. D. C. 45	7, 10, 12
Waring vs. Waring, 53 N. Y. 570.....	15
Wells vs. Wells, 11 App. D. C. 392	15

IN THE
Court of Appeals, District of Columbia

JANUARY TERM, 1927.

No. 4550.

PAUL C. WARNER, *Appellant*,
vs.
NATALIE A. WARNER, *Appellee*.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This is an appeal by Paul C. Warner, who was the defendant below, from so much of a decree entered on the 20th day of July, 1926, as awarded to the appellee "the permanent custody" of the minor child of the parties hereto.

On April 8, 1924, the appellee, Natalie A. Warner, filed a bill in equity against the appellant, Paul C. Warner, for a divorce *a mensa et thoro* (R. pp. 2-7). This bill alleged both the parties were residents of the

District of Columbia, married October 11, 1920, in Boston, Massachusetts; that one child, Helen Adrian Warner, was born to them on October 11, 1922. The bill charged the appellant with assaults upon the appellee and the use of opprobrious epithets concerning the appellee in the presence of strangers; that the appellee was compelled, because of the conduct of the appellant, to leave him several times. The bill further charged that the appellant "is addicted to and habitually uses intoxicating liquors" (R. p. 5), and that, at the time of filing the bill, the appellee and their child were in destitute circumstances. The bill prayed for support and maintenance and a decree for divorce *a mensa et thoro* and the custody of the infant child (R. p. 6): On the bill a rule issued on the 8th of April, 1924, to which, on the 11th of April, 1924, the defendant filed an answer (R. pp. 7-13). By stipulation of May 21, 1924, It was agreed that this answer should also be considered as the answer by the appellant to the bill of the appellee. The answer admitted the residence of the parties and the marriage and alleged a pre-nuptial agreement that issue should be raised in the Roman Catholic church. The answer admitted the birth of the infant, Helen Adrian Warner, but alleged that the appellee took the child without excuse from the home provided by the appellant. All the other allegations said answer denied and alleged that the appellee had been gratified in her every wish and had unjustifiably abandoned the appellant. That on the occasions when the appellee left home prior to the final leaving, he had condoned her acts. He charged that the appellee deserted him on the 12th of March, 1924, without any justifiable reason and denied that she and the infant child were in destitute circumstances at the time of filing

the bill. It alleged that he had given her \$100.00 on March 13, 1924, and that he was a Naval officer and that she had access to the commissary and, in fact, was obtaining food and supplies from the commissary. The answer further alleged that the plaintiff had a key to the apartment in which they had lived and that she had returned there and removed furniture therefrom including articles of personal apparel belonging to him; that from the 1st of January, 1924, to the time of filing the answer, in addition to supplying the table, paying rent and servant hire, he had given the appellee \$450.00; that the appellee had a colored maid in her employment at the time of filing the bill. The answer further alleged that the appellee had at various times demanded of him \$2,000.00 which he had saved prior to his marriage and had threatened to divorce him unless it was given. The answer denied that the appellee had endeavored to live amicably and peaceably and said the fact was that he had been compelled to accede to unreasonable demands in order to maintain his home. The answer denied that the appellant had given to the appellee an automobile as alleged in her bill and further alleged that since the desertion he has not known the whereabouts of his wife and child, but has endeavored to effect a reconciliation through counsel. The answer also alleged that he would lose certain pay allowances as a married man if the appellee remained apart and offered to receive the appellee back into his home. The answer asked the dismissal of the bill and for the award and custody of the child to the appellant.

Thereafter, by leave of court, on May 21, 1926, the appellant was permitted to file an amended answer (R. p. 15), which answer was on that day filed (R. pp. 15-

18). The amended answer adopted the first eleven paragraphs of the answer of April 11, 1924, and in addition charged that the appellee had, since the beginning of this suit, so unjustifiably abused and mistreated the appellant that he felt no longer bound to forgive and condone the appellee. That the conduct of the appellee on the occasions when he visited his daughter, as permitted by order duly passed, and her unwarranted and malicious language used of and concerning him in an answer by the appellee to a rule issued against her for failure to permit him to see his child had convinced him that his home could not be re-established with any hope of success and by way of a cross-bill in said amended answer he charged (R. pp. 17-18), the appellee with use of the vilest and most abusive epithets about and to the appellant and of and concerning his family. That the appellee was extravagant and kept him constantly in debt causing great mental distress and that on the 12th of March, 1924, without justification or excuse she deserted and abandoned him. The amended answer prayed dismissal of appellee's bill and prayed for a decree of divorce a *mensa et thoro* and for the custody of their infant daughter.

On May 28, 1926, the appellee filed a reply to the amended answer which reiterated the charges of her bill, denied the desertion by her of the appellant, denied the charges made in the amended answer and cross-bill and alleged that she has properly conducted herself as a wife and prayed a dismissal of the cross-bill and for the custody of the infant and for a divorce a *mensa et thoro* in her behalf (R. pp. 19-23). The cause came on for hearing and on the 20th of July, 1926, a decree was entered (R. pp. 23-25) dismissing

the bill of the appellee, Natalie A. Warner, and granting to the appellant, Paul C. Warner, a divorce *a mensa et thoro*. The decree awarded the "permanent custody" of the minor child, Helen Adrian Warner, to the appellee with the right of the appellant to have custody of the child at certain times and on certain days of the month and ordered the appellant to pay certain fees and expenses (R. pp. 24-25).

From so much of the before-mentioned decree which provided that the "permanent custody" be granted to the appellee, the appellant noted this appeal. The questions involved are:

1. Whether the court had power and jurisdiction under these conditions to award such custody to the appellee.

2. If the court had power, whether it abused its discretion in so doing.

ASSIGNMENT OF ERRORS.

1. The court erred as a matter of law in awarding the custody of the infant child of the parties herein to the plaintiff.

2. The court erred in that its decree, in awarding the custody of the infant child of said parties herein to the plaintiff, constituted in law an abuse of discretion upon the part of the court in regard to awarding the custody of said child.

3. The court erred in holding as a matter of law that he had the authority to award the custody of the infant child of the parties herein to the plaintiff, having found against the plaintiff on her original bill and granted the cross-bill of the defendant.

4. The court erred in holding upon the evidence in this case that the plaintiff was a proper party to whom

to award the custody of the infant child of said parties herein.

ARGUMENT.

For convenience assignments of error numbers one and three will be considered together. They raise the question of whether or not the court had jurisdiction to award to appellee (Plaintiff below) the "permanent custody" of the minor child, after having dismissed the bill of appellee.

The power of the court is derived from the pertinent provisions of Chapter 22 of the Code of Law of the District of Columbia.

Section 966 of the Code of the District of Columbia, among other things, provides "that legal separation from bed and board may be granted for drunkenness, cruelty and desertion."

Section 977 is as follows: "If the divorce is granted on the application of the husband, the court may, nevertheless, require him to pay alimony to the wife, if it shall seem just and proper."

Section 978 is as follows: "After a decree of divorce in any case granting alimony and providing for the care and custody of children, the case shall still be considered open for any future orders in those respects."

The trial justice seemed to think that the last two named sections gave him power to award the custody of the infant child to the appellee. It will be observed that section 977 merely gives the court power to decree alimony to the wife when granting a divorce on the application of the husband. There is no language whatsoever in the section from which it can, by any method of reasoning, be inferred that said section was

also intended to clothe the court with power to grant the custody of a child in such event.

Section 978 obviously is intended to apply to cases where the decree for divorce is rendered on the application of the wife. If the latter is not so, it is a mere repetition, at least in so far as alimony is concerned, of section 977.

Section 980 of the Code can have no bearing since it provides the means to compel a husband and father to maintain his wife and children "whenever any husband shall fail or refuse to maintain his wife and minor children, if any, although able so to do". The other sections contained in Chapter 22 have no application whatever to the facts involved in this case.

It is respectfully submitted that the case of *Towson vs. Towson*, 49 D. C. App. 45, is controlling in this respect. In that case the wife sued the husband for a limited divorce, charging cruelty and nonsupport. The husband had a suitable home at Alexandria, Virginia, open to her. The Court dismissed the wife's bill but granted her "permanent alimony for the support of herself and son and giving her custody of the child, subject to the right of the father to visit him at stated times." This court held that the rule that a complainant that failed to establish the right to the principal relief sought could not have a decree against the defendant for the mere incidents to that relief, was not changed by the provisions of section 980 of the Code of Laws of the District of Columbia. The Court also in that case reversed the decree of the trial court "in so far as it provides for support and maintenance of the wife and affects the custody of the child."

In the instant case at the conclusion of the testimony, the following occurred:

“The Court: It has taken some time but there are just two points to be considered, so if you do not want to argue it I will dismiss the bill. I think I am justified in saying that of a good many of these cases I have tried, this is one of those that has the least merit in it. The plaintiff has a good man for a husband—some of them don’t, and I believe he has done his utmost to be the kind of a husband which his letters and telegrams to the plaintiff before they were married showed that he wanted to be, and she said that she had no money or comfort or clothing for herself and baby, wherein her own admissions are absolutely against her. She made a bad mistake. If there is any remedy for it or not I don’t know. There may be or not, but at any rate she has absolutely failed to make out the allegations of the bill and, therefore, the bill is dismissed on its merits.

Mr. Leahy: There is an amended cross-bill also, if Your Honor please, wherein the defendant has asked for a decree granting a limited divorce.

The Court: I think he is entitled to it. His wife left him and she had no business to.”

From this it will be seen that the appellee failed wholly to sustain her allegations. The record shows that the appellant is a Naval officer and held posts of very confidential and also of a technical nature. The very language of the trial justice above quoted shows that the appellee was unworthy of belief.

It must be remembered that the law on divorce in the District of Columbia is entirely statutory, notwithstanding the fact that the equity branch of the trial court hears such cases. Consequently divorce proceedings are not the invoking of the general jurisdiction of equity and in such cases the chancellor does not act as *parens patriae*.

In the case of *Thomas vs. Thomas*, 250 Ill. 354, the wife sued for divorce on the ground of desertion. The husband filed a cross-bill alleging acts showing her desertion of him, not praying for divorce, but asking merely for the custody of the children. There was a demurrer to the cross-bill, based on the ground that the plaintiff did not mention the children in her bill, which demurrer was overruled. Thereafter the plaintiff sought to dismiss her bill. The trial court refused to grant the motion to dismiss, entertained the cross-bill and granted the custody of the children to the father. The appellate court held that the cross-bill could not be maintained and that the court was without jurisdiction and in the course of its opinion the appellate court said:

“The argument in favor of said jurisdiction is upon the ground that the courts of equity have a broad and comprehensive jurisdiction over the person and property of infants. The existence of such jurisdiction has been frequently asserted in the strongest language. * * * What has been so often said respecting its jurisdiction does not mean that courts of equity take upon themselves the care, custody, education and maintenance of all the children within the territorial limits, where they exercise their powers, but when a suit is instituted in a court of equity relative to the person and property of an infant, he is treated as a ward of the court, and the court will not allow his rights to be prejudiced by any act, either of himself or any other person. * * * Where some proceeding is instituted in which the infant is a party, either as plaintiff or defendant, the controversy and decision of the court relate to *his* rights and property. * * * The jurisdiction so exercised respecting the rights and property of infants is a part of

the general equity jurisdiction, but this case is not within those limits.”

Appended to the above case in 35 L. R. A., at 1158, is a note on the question of the jurisdiction of the court to dispose of the custody of children after refusal to grant a divorce, on which question the note says: “The cases are quite evenly divided.” In support of the proposition that the court has no jurisdiction in such cases there was cited the case of *Brenot vs. Brenot*, 102 Cal. 294, holding that where the bill and cross-bill of both parties was dismissed, the court was not required to make an order as to the custody of the children.

Also *Keppell vs. Keppell*, 92 Ga. 506, holding that the disposition of the children can only be made when a divorce is granted.

Also *Garrett vs. Garrett*, 114 Iowa 439, holding it error for the court to award the custody of an infant to the wife and ordering the husband to pay for its support, after denying the wife a divorce.

To the same effect is *King vs. King*, 42 Mo. App. 454, *Simon vs. Simon*, 159 N. Y. 549; *Davis vs. Davis*, 75 N. Y. 221. The latter case is quoted with approval in *Towson vs. Towson*, 49 D. C. App. 45. The same note quotes two Alabama cases, one Arkansas, one case in 92 California, One in Kentucky, one in Louisiana, one in New Jersey, one in Texas, and one in another jurisdiction holding that such jurisdiction exists. It will be observed, however, in the Alabama case of *Cornelius vs. Cornelius*, 31 Ala. 428 the statute specifically gave the court the right to award the custody of the infants to either of the parties, where “neither party shall obtain a divorce.” The California case of *Luck vs. Luck*, 92 Cal. 653, is apparently overruled

by the latter case of Brenot vs. Brenot, 102 Cal. 294. In the Kentucky case of Hoskins vs. Hoskins, 28 Ky. L. Rep. 435, the right of the court to render such a judgment was not questioned. Nor did it appear to be questioned in the Louisiana case of Knoll vs. Knoll, 114 La. 703. And the same is true in Nicholls vs. Nicholls, 3 Duer 642. Eliminating these, three jurisdictions are in that note held as sustaining the power of the court to award the custody of the children: Texas, Defee vs. Defee, 51 S. W. 274; New Jersey, Power vs. Power, 65 N. J. Eq. 93; and Arkansas, Horton vs. Horton, 75 Ark. 22. The last case was decided on the theory that the chancellor had the power, on habeas corpus proceeding, to award the custody of the children as might be for their best interest and that it might be idle to turn them out of court and go into the chancellor's chamber and have the same matter decided.

The later cases on the same point are collected in a note found in L. R. A. 1917-D. 976. In the last named note the case of Jacobs vs. Jacobs (Minn.), 161 N. W. 525, 1917-D L. R. A. 971, is cited as supporting the idea that the court could award the custody when denying the divorce, but section 7140 of the general statutes of Minn. of 1913 provides "Although a decree for separation from bed and board be not made, the court may make such decree for the support of a wife and her children, or any of them, by the husband, or out of his property or earnings, as the nature of the case renders suitable and proper." This section, the Court held, gave the court a right to award custody under such circumstances. We have no similar statute in the District of Columbia. Likewise, a Kansas statute specifically gives the court power "where divorce is refused * * *

41 L. R. A. (11th ed.) 564
see sub para 10 - p 594

to make such orders as may be proper for the custody, maintenance and education of the children.” Likewise, in Massachusetts, a statute specifically empowers the court to award the custody of a child temporarily, *DeFerri vs. DeFerri*, 222 Mass. 38; in *Bensen vs. Bensen*, 20 Cal. App. 462, the decree awarding custody was reversed where neither party was entitled to a divorce. The later case of *Redding vs. Redding* (N. J.), 85 Atl. 712, seems to reverse the holding of *Power vs. Power*, 65 N. J. Eq. 93, in that it holds that the court in dismissing a bill for divorce said that the question of the custody of the children raised by the bill of complaint was dependent upon the granting of the prayer for divorce and must fall with it.

The case of *Finlay vs. Finlay*, 240 N. Y. 429, decided July 15, 1925, in which the decision was rendered by Justice Cardozo, follows the earlier case of *Davis vs. Davis*, 75 N. Y., 221, quoted with approval in *Townson vs. Townson*, 49 App. D. C. 45.

In the *Finlay* case the plaintiff (husband) sued the defendant (wife), alleging that the wife had deserted him and taken the children with her and that she was residing in New York and her husband was residing in St. Louis. The husband did not ask separation, but prayed for a decree “granting unto the plaintiff the custody and control during fixed periods, each succeeding year, of his said two sons, and for such other and further relief as may be just in the premises.”

After stating that the statutes regulating proceedings for divorce fixed the custody of children as an incident to a judgment for a divorce or separation, the court said the redress must be sought by other remedies. Continuing, the court said:

“The plaintiff now before us makes no demand for divorce or separation. That being so, we seek the measure of his rights, not in the statutory jurisdiction in causes matrimonial, but in the jurisdiction to determine the custody of infants as it exists at law and in equity irrespective of the statute. We find no authority for the exercise of that jurisdiction through the medium of an action by one parent against the other. Except when adjudged as an incident to a suit for divorce or separation, the custody of children is to be regulated as it has always been, in one or other of two ways: By writ of habeas corpus, or by petition to the chancellor. *Reg. v. Gungall* (1893) 2 Q. B. 232, 238-C. A.; *Eversley*, Dom. Rel. 514 *et seq.*; cf. *People ex rel.*, *Riesner v. New York Nursery & Child’s Hospital*, 230 N. Y. 119, 124; 129 N. E. 341.”

“* * * We find no sufficient reason for discarding this historic remedy and establishing in its place, or even as a supplement, a remedy of action. The difference is more than formal. The chancellor in exercising his jurisdiction upon petition does not proceed upon the theory that the petitioner, whether father or mother, has a cause of action against the other or indeed against anyone. He acts as *parens patriae* to do what is best for the interest of the child. He is to put himself in the position of a ‘wise, affectionate, and careful parent’ (*Reg. v. Gungall*, *supra*), and make provision for the child accordingly. He may act at the intervention or on the motion of a kinsman, if so the petition comes before him, but equally he may act at the instance of any one else. He is not adjudicating a controversy between adversary parties, to compose their private differences. He is not determining rights “as between a parent and a child,” or as between one parent and another, (*Reg. v. Gungall*, *supra*). He ‘interferes for the protection of infants, qua infants, by virtue of the prerogative which belongs to the Crown as *parens*

partiae.' Re Spence, 2 Phill. Ch. 247, 41 Eng. Reprint, 937."

"* * * The remedy by action is thus seen to be incongruous in principle. It is more than that, however; it is cumbrous, expensive, and dilatory in practice. There must be pleadings and notices of trial and crowded calendars and formal proofs. The remedy by petition is summary and cheap and swift."

SECOND AND FOURTH ASSIGNMENTS.

As both of these assignments of error present but substantially one question, namely, whether or not the court abused its discretion in awarding "permanent custody" of the infant to the appellee, they will be considered together.

Counsel believe that it will be conceded that, in cases where the court has jurisdiction to award custody of infants, the awarding of such custody is a matter of sound judicial discretion and will be disturbed only on showing the abuse of that discretion.

In determining whether the discretion has been abused in this case, the question of the fitness or unfitness of the mother is pertinent. *Slack vs. Perrine*, 9 App. D. C. 129. In the latter case the proceeding was by *habeas corpus* to determine the custody of children committed to the custody of the mother by the courts of another jurisdiction. After stating that the fitness of the mother was not before the court in that case, the court said:

"If when these children shall have been delivered to her, in accordance with the opinion of this court, it may be made to appear to the satisfaction of the court having jurisdiction in the premises, that she is not a proper person to be intrusted with the

care and education of her own children, other provisions may be made thereafter."

This court in the case of *Wells vs. Wells*, 11 App. D. C. 392, a divorce proceeding, said: "No certain fixed rule for the government of the Courts in all cases can be laid down, other than this, that the best interest of the children must be consulted as paramount. It has been repeatedly declared in such cases, that the Courts do not act to enforce the rights of either parent, but to protect the interest and general welfare of the children. Indeed, the entire matter of the award of the custody of the child or children, and their maintenance, in such case as the present, in one largely, and it may be said almost exclusively, of judicial discretion, and that discretion is never reviewed by an appellate court, except when such discretion has been manifestly abused. *Waring v. Waring*, 53 N. Y. 570; *Graft v. Graft*, 76 Ind. 136; *Cowes v. Cowes*, 8 Ill. 435, 440."

To the same effect is *Stickel v. Stickel*, 18 App. D. C. 149, a habeas corpus proceeding, wherein the court said: "What is best for the child in disposing of its control during infancy rests in the sound discretion of the trial court and its exercise thereof and will not be reviewed save in a clear case of error."

Seeley v. Seeley, 30 App. D. C. 192, a habeas corpus proceeding, lays down the same doctrine, saying respecting the children: "Their custody is one largely of judicial discretion and that discretion is never reviewed by an appellate court unless it has been manifestly abused."

In the case of *Snow v. Snow*, 52 App. D. C. 39, a divorce proceeding, the decree gave the custody of the child to the mother with the right of the father to see

it on Sundays. Later the decree was modified so that each parent had its custody during alternate months. There was subsequently another modification giving the mother the custody with the right of the father to have its custody on Sundays during certain hours until October 1, 1921, and thereafter on every Saturday of each week. The last order was the one appealed from. This court modified that order and gave the mother the custody during the school year and gave the father its custody on Saturdays and during school vacation. In that case the cases adverted to under this assignment of error were cited and the court said: "The disposition of the custody of the child rests in the sound discretion of the court, subject to the rule that its welfare is the paramount thing to be considered."

Bearing the foregoing cases in mind, appellant urges that the trial justice clearly abused his discretion in this case, and that to allow the order to stand will result as follows:

1. The child will show no respect for its father.

See defendant's exhibits Nos. 1 and 2 cross (R. p. 150); also defendant's exhibits Nos. 16, 16-a and 16-b, (R. pp. 150, 151); also defendant's exhibit No. 15 (R. p. 152). Concerning the last named exhibit, the court's attention is invited to the fact that some of it at least was admitted by appellee to be in her handwriting. (R. pp. 45 and 46.) The record is full of incidents, as the trial justice said, "wherein her own admissions are absolutely against her," as for example she told the court on direct examination that her husband had driven her from his home, but admitted that she was planning to leave her husband as far back as the middle of December, 1923 (R. p. 50): that she, before Christmas, 1923, secretly bought a trunk which she intended

to take with her when she left him (R. p. 50). She admitted writing defendant's exhibit 1 (R. p. 50), and said that at the time she wrote it she was thinking of preserving her home and wanted a home in Washington (R. p. 50). Her bill charged the husband with being an habitual drunkard. After appellant had produced Dr. Ivan King (R. p. 86), Robert S. Hollingshead (R. p. 95), Missouri Jackson (R. p. 100), Daniel Foley (R. p. 102), Kneffler McGuiness (R. p. 103), William B. Childs (R. p. 104), William C. Fresbie (R. p. 105), Lieut. Walter D. Diehl (R. p. 105), as witnesses, as well as listening to the testimony on depositions of F. M. Robert (R. p. 129) and others, the court said: "We might as well shorten the agony. I don't believe he did get drunk. I will let you know that now." (R. p. 106.)

If the appellee would make such reckless charges without any foundation, she certainly would not teach the child to have respect for its father.

2. If the infant is allowed to remain in the custody of its mother, she will unquestionably raise it with no respect for this country or its institutions.

Mrs. Wilmar Nichols King testified that she met the Warners in 1921 at the Naval Air Station, Pensacola, Florida, where Mrs. King and her husband, Lieut. King, lived at the Station in a house about fifty feet from the Warners. They lived there about a year (R. p. 89); they visited, and she testified to certain displays of temper by the appellee and, at the time of her testimony, the appellee was making remarks and the counsel for the appellant said, "May we have remarks cease, if you Honor please, while witnesses are testifying?" The Court, "Yes." (R. p. 90.) She testified to Mrs. Warner having said, "The American

women are immoral, immodest and indecent'' (R. p. 91), and further that the appellee had said ''that if she (appellee) should be so unlucky as to have a child, she (appellee) intended raising it as a Russian * * * and would get all she could out of Lieut. Warner before she went back to Russia'' (R. p. 91). The witness further testified that, at a certain lowering of the flag at the Naval Station, the appellee had stated she ''hated America and Americans and that she (appellee) wished that the Germans had gone on until they defeated them'' (R. p. 91). She further testified that the appellee had stated, concerning certain Americans lost in a balloon near the Naval Air Station, that ''that was good enough for them'' (R. p. 91). This witness had told the appellee that she would have nothing else to do with her after the expression of these sentiments (R. p. 91). This same witness remonstrated with the appellee for expressing such sentiments, saying some one might report her, and appellee replied that ''she could very easily lie out of those things in any court, regardless'' (R. p. 92). This same witness testified to another occasion when one or two Japanese had gotten on the Air Station and witness remarked to appellee that it was very serious ''inasmuch as they lived immediately in front of the magazine,'' and she had suggested to appellee that: ''suppose they (magazines) should set fire?'' and appellee responded, ''it didn't make any difference to her, so long as she was out of there'' (R. p. 92).

3. The appellee will not give the child proper moral training.

In this connection the court's attention is again invited to the exhibits on pages 150 and 151, and exhibit No. 15 on page 152, to the testimony of Mrs. Wilmar

Nichols King above quoted and in addition the statement said by this same witness to have been made by the appellee that she (appellee) did not intend to have any children, coupled with the fact that appellee refused to let Dr. Ivan King examine her when called to visit her professionally and she told him that she was in the habit of taking cold water douches and baths (R. p. 86). Dr. King further testified that the effect of cold douches upon a woman in her condition would be deleterious to her health and might produce very serious results; might produce abortion if the woman was pregnant. Dr. King said that shortly thereafter Mrs. Warner went to a civilian hospital in Pensacola (R. p. 87). The appellee herself testified that she had had an abortion procured upon her at the office of a Dr. Gunther, but she could not remember the address of his office (R. p. 41); that this doctor had "used instruments on her, until she left Boston, maybe four or five times." While in Boston she stayed with a Mrs. Borgman, who was a friend of hers and knew her mother and all of her people in Russia and knew her since she was fifteen years of age, but the appellee did not tell Mrs. Borgman any of this (R. p. 42).

4. The conclusion of the trial court on the testimony shows conclusively that the appellee "has a good man for a husband," who has "done his utmost to be the kind of a husband which his letters and telegrams to the plaintiff before they were married showed that he wanted to be" (R. p. 127). The telegrams and letters appear in the record on pages 142 to 149. To deprive such a father of the custody of the child and give it to a mother who brings a case that, as said by the Chief Justice at the conclusion of the testimony, "has the least merit in it," is to punish the appellant for

being all that a husband and father ought to be and to reward one who on the record appears to have been an immoral, filthy-minded, foul-tongued, unpatriotic and un-American mother for her faithlessness and utter disregard of all proprieties.

WILLIAM E. LEAHY,
HARRY A. HEGARTY,
Counsel for Appellant.

OFFICE OF THE CLERK
DISTRICT COURT OF APPEALS
MAY 2 1927

IN THE
Court of Appeals, District of Columbia

JANUARY TERM, 1927.

No. 4550.

PAUL C. WARNER, *Appellant,*

vs.

NATALIE A. WARNER, *Appellee.*

BRIEF OF APPELLEE.

RAYMOND NEUDECKER,
Attorney for Appellee.

IN THE
Court of Appeals, District of Columbia

JANUARY TERM, 1927.

No. 4550.

PAUL C. WARNER, *Appellant*,
vs.
NATALIE A. WARNER, *Appellee*.

BRIEF OF APPELLEE.

PREFATORY STATEMENT.

Out of a maze of controverted facts and contradictory pleadings, which fill one hundred and fifty-eight pages of the printed transcript of record in this case, there resulted a decree in the Supreme Court of the District of Columbia, adjudicating the marital rights of Paul C. Warner, appellant, and Natalie A. Warner, his wife, appellee.

A great number of witnesses testified in the trial court on the issues raised there between Warner and his wife. There were assertions and contradictions

of alleged acts of cruelty, of drunkenness on the part of appellant, of the use of profane and indecent language on the part of both husband and wife, and generally of every alleged marital difficulty between Warner and his wife. Trial of the case occupied considerable of the Court's time. The Chief Justice of the Supreme Court of the District heard the evidence below, saw all the witnesses before him, including both appellant and appellee, and reached a conclusion concerning the facts, after a prolonged hearing. He entered a decree which, among other things, provided, that appellant should pay a sum certain each month for the support of his daughter, a girl now 4 years of age, whose custody was awarded to her mother. The decree gave reasonable opportunity to the husband to visit and be with his daughter.

It would serve no useful purpose to set forth in detail here the testimony adduced at the hearing of this case in the Court below. The record is voluminous, containing many of the exhibits received in evidence.

The assignment of errors presents two questions, first, whether there was any jurisdiction in the Court below to award custody of the child, after *denying* the application of the wife for a limited divorce, although *granting* the application of the husband for a separation, and, secondly, whether, if the Court below had such jurisdiction, it abused its discretion in so awarding custody of the daughter to appellee.

ARGUMENT.

Appellee will attempt to answer the brief of appellant in the same order as the two questions are discussed in his brief.

Appellant's contention that there is no authority in law for the Supreme Court of the District of Columbia to award custody of a minor child to the losing party in a divorce case must fall, in the light of the decisions on that point. The various Code sections cited by appellant do not constitute all the authority conferred upon the lower court in the determination of marital cases.

The first question, namely, whether the Court had power and jurisdiction to award custody of the minor daughter to the appellee after *dismissing* her bill, and *awarding* a limited divorce to appellant, is squarely answered by *Wells v. Wells*, 11 App. D. C. 392. This case decided: (1) that in a suit for divorce where a cross-bill is filed, such cross-bill may be retained and made the basis of a decree, although the original bill is *dismissed*; (2) Sec. 747 of the Revised Statutes of the District of Columbia authorizes the Court to decree, in *any case of divorce*, in whom the guardianship and custody of children of the marriage of the parties divorced shall be placed; (3) which of the parties to the divorce proceeding shall be charged with the maintenance of such children; (4) that in determining to which of the parties the custody of the minor child should be awarded, the best interests of the child will be considered; and (5) that the matter of the awarding of the custody of children in divorce cases is one *almost exclusively* of judicial discretion, which will never be disturbed on appeal except when manifestly abused.

Wells v. Wells is scantily discussed in appellant's brief at page 15. Appellee submits it is the law of the District of Columbia on the questions involved in this appeal. It has not been overruled by any later decision of this Court, nor has its doctrine been repealed,

even by implication. That suit originated by the wife's filing a bill for divorce upon the ground of desertion, and failure, on the part of her husband, to furnish maintenance for herself and child; she prayed for alimony and custody of the child. An answer was filed by the husband who later filed a cross-bill, (as was done in the instant case) alleging that his wife had deserted him. The trial Court dismissed the original bill filed by the wife, after a hearing on the merits, but granted the husband a divorce on the cross-bill filed by him. The decree that was the subject of consideration by this Honorable Court awarded custody of the child of the parties to the mother and charged the father with its maintenance. It was insisted that this was beyond the power of the trial Court to do, but the Court of Appeals sustained the decree. Chief Justice Alvey, who delivered the opinion, on page 395 said: "There can be no doubt or question of the power and jurisdiction of the Court below to pass the parts of the decree appealed from. In all such cases where there has been a decree dissolving the marriage absolutely, or only partially, the Courts, looking *principally* to the welfare and happiness of the children, will award their care and custody to the one party or the other as will best promote their interests and general welfare."

Towson v. Towson, 49 App. D. C., 45, has no application to this case. Sec. 747, R. S. D. C. provides: "The Court shall also have the power to order and direct, *in every case of divorce*, who shall have the guardianship and custody of the children of the marriage of the parties divorced, and who shall be charged with their maintenance." (Italics supplied)

To the same effect as Wells v. Wells are Owens v. Owens, 54 Ga. 526; Musselman v. Musselman, 44 Ind.,

106, and *Power v. Power*, 65 N. J., Eq. 93. See also, in this connection, the memorandum opinion of Justice Siddons in *Cole v. Cole et al*, 46 W. L. R. 434. Also *Goodrich v. Goodrich*. 44 Ala. 670; *Prather v. Prather*, 4 Desaus, 33, 44.

For the latitude allowed the trial Court in determining who shall be awarded custody of infant children, see *Wells v. Wells*, *supra*; *Waring v. Waring*, 53 N. Y., 570; *Graft v. Graft*, 76 Ind., 136; *Cowes v. Cowes*, 8 Ill., 435. It is contended by appellee that nothing in the Code of Laws of the District conflicts with the provisions of Section 747, R. S. D. C., as above quoted. It is appellee's claim that this statute is the law of the District of Columbia, controlling this case.

Said the Supreme Court of Arkansas, in *Horton v. Horton* 75 Ark. 22, where the right of the trial Court to award custody of a child, and requiring the father to support it, where the wife's plea for a divorce had failed, was questioned:

"A learned writer on the subject of marriage and divorce points out that in those states holding that custody of children cannot be awarded, under the divorce statute, when the divorce is denied, the order could be made in habeas corpus proceedings; and that there is no reason why it should not be made in the divorce case when all the parties are before it instead of remitting the parties to the other remedy. Nelson on Marriage and Divorce, Section 979. This reasoning commends itself to the Court. While it looks beyond the authority of the Chancery Court in divorce suits, where no divorce is granted, to award the custody of the children, yet it cannot be questioned that the Chancellor of that Court is invested with full power to award custody of minor children for their best interests on habeas corpus proceedings.

It seems idle to turn parties out of Court, and invite them into the Chancellor's chambers for the same relief sought in Court."

PRESENT APPEAL DIFFERS FROM THOMAS CASE—STATE DECISIONS OF NO GREAT VALUE HERE.

Thomas v. Thomas, 250 Ill., 354, does not support appellant's contention that the Court had no jurisdiction to award to appellee custody of her minor daughter. The Thomas case decided, among other things, that the divorce act (of Illinois) did not authorize the maintaining of an original bill by husband or wife against the other for the sole purpose of obtaining the care and custody of children, as the Court, under that act, could only make orders concerning the care and custody of children, during the pendency of a divorce suit, or upon a final hearing, when a divorce is *decreed*. The case further decided that a bill filed solely to obtain custody of children cannot be maintained under the general chancery powers. But the situation presented in the Thomas case differs considerably from the one at bar. The cross-bill filed by the husband in the Thomas case *did not seek a divorce*. The cross-bill filed by appellant *did seek a divorce*. *Its prayer for a limited divorce was granted*. A LIMITED DIVORCE WAS DECREED. Hence this case does not present the situation of there being *no principal relief awarded*. The Court in the instant case ultimately disposed of the rights of the parties, subject to appeal. If both bills had been dismissed, it is conceded by appellee that this appeal would have a different aspect, and it might then be seriously contended that the Court had no authority to make a decree respecting custody of the minor child because, as decided by this Court in Towson v. Towson, 49 App.

D. C., 45, the rule is, that a complainant, who fails to establish the right to the principal relief sought, cannot have a decree against the opposite party for the mere incidents of that relief. Sec. 978 of the Code provides that a case shall be considered to be open for any future orders respecting the awarding of alimony and the care and custody of children. If it had been the intention of Congress to limit the powers of the chancellor in regulating the custody, care and control of children in divorce actions, is it unreasonable to suppose that Sec. 978 would have specified that an order for alimony and the care and custody of children could only be made in favor of the party who was successful in the Court below?

This question is, in fact, answered by the section immediately preceding 978, which provides that even should the husband obtain a divorce against his wife, the Court has the power to make him pay her alimony. This power is seldom exercised by the local court, but this fact does not deny its existence.

When appellant exhibited his cross-bill he filed what was in the nature of an original pleading, asking the further aid of the Court, beyond the mere question of defense, and the relief sought by him was plainly such as the Court, in point of jurisdiction, was competent to administer.

“After a court of equity has obtained jurisdiction upon any equitable ground, it will retain such jurisdiction for the purpose of avoiding more than one suit and doing justice between the parties, although in doing so, it may be necessary to establish purely legal rights or to grant legal remedies.” *Thomas v. Thomas, supra*; *Longshore v. Longshore*, 200 Ill. 470.

It will be observed from the excellent discussion of this question in 19 *Corpus Juris*, 342, that the Courts

of the several states are by no means in accord upon the right of the Court to award the custody of children when a decree of divorce is denied. This contrariety of decision, as might be expected, grows principally out of the differences in the statutory regulations, controlling in the different jurisdictions, and, for such reason, decisions of other states are of no especial value here.

Said this Honorable Court in *Simmons v. Palmer*, 33 App. D. C. 592: "When a husband and wife are brought into Court in a divorce proceeding, the domestic relation is made a matter of judicial investigation, to the extent of protecting the infant children of the parties. In such a proceeding the Court will extend its arm to equitably protect the infants." This case had to do with an appeal from an order of the Supreme Court of the District of Columbia, dismissing a petition for the writ of habeas corpus, filed by James Lee Simmons, following his committment to jail because of his refusal to obey an order entered by the equity branch of the Court, directing the payment of a certain sum weekly for the support and maintenance of his infant son. The power of the Court to compel the payment of maintenance to a third person, for the support of the infant son of Simmons, was attacked upon two grounds: (1) That, at common law, the father could not be compelled to support his child; and (2) That, under the statutes of this District, he could only be compelled to pay alimony in a divorce proceeding to the wife for the support of minor children when the wife has been given the custody of the child. The judgment of the Supreme Court, dismissing the petition for the writ, was affirmed. See also *Tolman v. Leonard*, 6 App., D. C. 224.

In *Pearson v. Pearson*, 179, Ill. App. 127, the Court,

dealing with the question of discretionary power as to the custody of children, said that the common law right of the father to custody of the children must yield to the discretionary power vested by the statute in the Court, where the best interests of the child demand it, and that the Courts, in granting a divorce, consider the welfare of the children as the controlling consideration in determining who shall have custody of them where both husband and wife are equally fit. In *Gillett v. Bryant*, 203 Ill. App., 322, the Court decided that, as a general rule, children of tender years should not be taken from the custody of their mother when she is physically, morally, and, by general environment, a proper person for them to live with, and be controlled by; that the jurisdiction of the Court over the children of parties to a suit for divorce continues after the divorce decree, and such children are wards of the Court subject to its future orders and directions as to their care and custody. In *Corrie v. Corrie*, 42 Mich. 509, which was a habeas corpus proceeding between parents for possession of a minor child, the Court said: "In contests of this kind, the opinion is now nearly universal, that neither of the parties has any rights that can be allowed to seriously militate against the welfare of the child. The paramount consideration is what is really demanded by its best interests. It is doing no violence to what is taught by judicial experience to assume that the disputing parties will be more alive to the satisfaction of their own feelings and interests than to the true end of the inquiry; while the innocent subject of the contention is utterly unable to speak or act for itself, and is in danger of being lost sight of, in the strife for its possession. No other occasion can call more loudly for judicial

vigilance, in reaching for the exact truth, and in putting aside, with an unsparing hand, the mere technicalities of procedure. The fate or interest of the child is not to depend on what the parties may see proper to state or to evade, in their formal altercations, nor on any judicial rule of pleading.”

WELFARE OF CHILD PARAMOUNT CON-
SIDERATION—NO ABUSE OF DISCRETION
SHOWN BY RECORD—CONCLUSION.

In *Bancroft v. Bancroft*, 173 Pac. 582, (Supreme Court, Cal.), where the discretion of the trial Court, in awarding custody of minor children to the wife, who was the defendant, was attacked on appeal, the Court said: “* * * In respect to the children of a marriage, which is being dissolved at the suit of either, or both, of the parties to it, the Court becomes invested with jurisdiction to determine to which of the spouses the custody of the children shall be assigned, and it retains such jurisdiction during the pendency of the case before it, and the welfare of the children is the paramount interest before the Court in determining who shall be their custodian, and in the exercise of this jurisdiction the trial Court is invested with a very large measure of power, which *will not be interfered with upon appeal except in the clearest instance of its manifest abuse.*” (Italics supplied)

“A decree of divorce vests jurisdiction in the trial Court to pass upon the custody of a minor child, which jurisdiction continues until the child reaches its majority, and the removal of the child from the State is not a taking of the child beyond the jurisdiction of the Court in the sense that the Court would thereby lose

jurisdiction to change its order in the future, should subsequent events require it, as both parents, parties to the divorce suit, are personally bound by its decrees and orders, and the Court may allow a parent, to whom the custody of a child has been awarded, to take it to another state, or to a foreign country, when the best interests of the child would thereby be subserved." *Meredith v. Krauthoff*, 177 Southwestern 1112. (Court of Appeals, Mo.)

In *McGuire v. McGuire*, 167 Northwestern, (Supreme Court, Mich.), 893, an appeal was noted from an order in circuit court, denying the petition of the husband, who obtained a divorce from his wife on the ground of adultery, to have awarded to him custody of a daughter, who, at the trial, was awarded to the mother, notwithstanding her adulterous conduct. Although finding the guilt of the wife proven, the trial court awarded the custody of the daughter to the mother, saying that unless she became married to the co-respondent in the case and thus provided a home for the child, or broke off her relations with said co-respondent, within a reasonable time after the trial, the court would be impressed with the necessity of awarding custody of the daughter to the father. After the decree, the husband filed a petition, reciting failure on the part of the wife to comply with the conditions of the Court's decision. The Supreme Court of Michigan held that, in view of the wife's answer that she was married to the co-respondent, it would decline to disturb the original order, awarding custody of the daughter to the mother, against whom adultery was proved.

In *Longinotti v. Longinotti*, 277 Southwestern (Supreme Court, Ark.), 41 the action of the trial court in awarding custody of a girl of high school age to the

mother, who had been convicted of adultery in a divorce proceeding, was upheld.

In *Gibbons v. Gibbons*, 75 Ore. 500, it was held:

“The minor children of divorced parties remain the wards of the Court which dissolved the bonds of matrimony, and, as such children were not parties to the suit, they are not bound by any decree as to the extent of their maintenance.”

This was cited with approval by the Supreme Court of Oregon in a later case, *Hess v. Hess*, 239 Pacific 124.

In *Prothero v. Prothero*, 242 Pacific 1 (Supreme Court, Wash.) it was held that, before taking children of tender ages from a mother and giving their custody to others, it should be clearly shown that she is an unfit and improper person to be entrusted with their custody.

In *Freeland v. Freeland*, 92 Wash. 482, it is said:

“But the fact that the conduct of a mother is not what others might think the most proper, is not sufficient, of itself, to deprive her of the right to the permanent or periodic custody of her minor child. Mother love is a dominant trait in even the weakest of women, and, as a general thing, surpasses the paternal affection for the common offspring, and, moreover, a child needs a mother's care, even more than a father's. For these reasons, courts are loathe to deprive the mother of the custody of her children, and will not do so unless it is shown clearly that she is so far an unfit and improper person to be entrusted with such custody as to endanger the welfare of the children.”

Speaking of the latitude allowed the chancellor in cases of this character, the Court of Appeals of Ala-

bama in *Glenn v. Glenn*, 106 Southern 226, observed: "He saw and heard the witnesses, and, was thereby better enabled than this Court could possibly be, to form a correct decision as to the controversy involved in these proceedings. Unless it affirmatively appears that his conclusion is palpably wrong and against the great weight and preponderance of the evidence, we would not feel justified in reversing the action of the lower court, and certainly this by no means appears."

In *Meadors v. Meadors*, 281 Southwestern 180 (Court of Appeals, Ky.), the wife was awarded a divorce by the Circuit Court. The husband attempted to obtain custody of his minor daughter upon the ground that his wife, after the divorce, proved herself unfit to have custody. Numerous affidavits were introduced by the husband, all bearing mainly on his general reputation and fitness, and that of his second wife, to have custody and care of the daughter, and attacking the reputation of an uncle of the wife with whom she made her home, following the divorce. On appeal, the order of the Circuit Court awarding custody of the daughter to her father was reversed, on the ground that the husband had not proved his wife to be unworthy of the trust, the Court remarking that: "If the children are of tender years, they are placed by the Courts in the custody of the mother whenever she is found worthy of the trust." Citing 9 R. C. L. Sec. 191; *Stephens v. Stephens*, 238 Southwestern 380; *Shallcross v. Shallcross*, 135 Ky. 418; *Campbell v. Campbell*, 209 Ky. 571.

Appellant concludes his brief by scandalizing the name of the woman he swore to cherish and protect, and who bore him a child under circumstances which strongly suggest that, so far as appellant was concerned, the babe was an unwelcome visitor. There is

not the slightest intimation anywhere in the record that appellee was at any time untrue to her marital vows, or that her thoughts ever dwelt upon other men; for appellant to condemn his wife, when the record does not justify this course, is but an attempt to prejudice her before the eyes of this Court. The salacious, obscene and indecent utterances, so loudly complained of by appellant, owe their presence in the record to the industry of appellant, who, instead of assuming a manly attitude in a situation the cause for which appellee vehemently denied responsibility, undertook to jot down and preserve for future use every ill-considered word spoken by an unhappy spouse in marital quarrels.

The trial Justice was in a better position to determine in whose custody the child should be placed. Appellant singles out the testimony of a garrulous, inquisitive neighbor of the Warner's in Pensacola, whose vindictive testimony must have impressed the Court that she was on ill terms with appellee and with practically the rest of the world. Appellee emphatically denied the conversations testified to by Mrs. W. N. King. She emphatically denied she ever used the expressions contained in Exhibits 16-A, B, and C, and said she had never applied such names to any person; she further added that her husband did not write down any conversations between them.

Appellant was awarded a limited divorce because his wife deserted him, not on account of cruelty. The record plainly shows that it was NOT awarded for the wife's cruelty. The trial court must have been impressed with appellee's fitness to have the custody of her daughter. Each party charged the other with re-

sponsibility for the abortion, concerning which appellant devotes considerable space in his brief. Despite appellant's concluding words, in which he so picturesquely alludes to his wife, his views were not shared by the Justice who tried this case. From this record, it is respectfully submitted this Honorable Court can not, and should not, form an unfavorable impression of appellee.

Whatever the differences between the parties in this case may have been, appellee repeats there was no suspicion that she had ever been faithless; their views of life differed; their ideas were irreconcilable; it is undoubtedly best they should remain apart; appellant is a naval officer who travels the seven seas; he is away from this District most of the time; to change the custody of the minor daughter at this time would mean that this Court would place this unfortunate little girl in the hands of strange persons; that appellee is devoted to her daughter there can be no question; that she will administer to her in a loyal, motherly way, also goes without saying; there being no error on the part of the trial Justice in awarding custody of the daughter to its mother and no abuse of the Court's discretion, evidenced by this record, it is respectfully submitted that the judgment of the Court should be affirmed.

Respectfully submitted.

RAYMOND NEUDECKER,
Attorney for Appellee.